IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2025

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P Nos.2427, 2428 & 1879 of 2018
and
WMP.Nos. 2939, 2940, 2336, 2941, 2943 & 5061 of 2018

Puducherry Power
Corporation Employees Welfare Union
having Regn. No. 1575/RTU/2009,
affiliated with the Puducherry
State Government Employees Central
Federation, No. 272,
Thomas arul street,
Municipal Colony,
Karaikal 609602 ... Petitioner in WP.Nos.2427 & 2428/2018

Vs.

1. Managing Director, Puducherry
Power Corporation Ltd.
No.10, Second Cross,
Jawahar Nagar, Boomianpet,
Puduchery 605005.

2. Chief Secretary to the Government,
Government of Puducherry,
Chief Secretariat, Puducherry.

3. Secretary to the Government,
Industrial Development (Power) Department,
Government of Puducherry,

Chief Secretariat, Puducherry.

4. Deputy Secretary to Government,
Industrial Development (Power) Department,
Government of Puducherry,
Chief Secretariat, Puducherry.

R-5 THE Government OF INDIA,
REP.BYITS SECRETARY MINISTRY
OF HOME AFFAIRS, J674 VGV,
NORTH BLOCK, CENTRAL SECRETARIAT,
NEW DELHI, DELHI 110 001.

(R5-SUO MOTU IMPLEADED AS PER
ORDER DATED 04.12.2024 IN
WP.2427/2018 BY DEVJ) ... Respondents in WP.Nos.2427 & 2428/2018

Prayer in WP.No.2427/2018 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of CERTIORARIFIED MANDAMUS to call for the records pertaining to the order of the 4th respondent dated 03.05.2017 made in No.A/55011/07/2016/PPCL/P5 in so far as the members of the petitioner Union are concerned, and quash the same and consequently direct the respondents to continue to pay in the same pay scales granted to them by Resolution dated 27.06.2014 made in Item No. 110.15 with all consequential monetary and benefits.

Prayer in WP.No.2428/2018 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of CERTIORARIFIED MANDAMUS to call for the records pertaining to the order of the 4th respondent dated 03.05.2017 made in No.A/55011/07/2016/PPCL/P5 in so far as the members of the petitioner

Union are concerned, and quash the same and consequently direct the respondents to continue to pay in the same pay scales granted to them by Resolution dated 27.06.2014 made in Item No. 110.15 with all consequential monetary and benefits.

In both WPs.

For Petitioner : Mr.L.Chandrakumar for M/S.M.Gnanasekar

For Respondents : Mr.V.Chandrasekaran, SPC for R5
: Mr.P.S. Kothandaraman, Govt. Advocate for RR1 to 4

<u>In WP.No.1879 of 2018</u>

K.Senthilkumar,
S/o.Kayarohanan,
Hindu, aged 45 years,
working as Junior Engineer,
Puducherry Power Corporation Ltd.,
T.R.Pattinam,
Karaikal. ... Petitioner

Vs.

1. Managing Director, Puducherry
Power Corporation Ltd.
No.10, Second Cross,
Jawahar Nagar, Boomianpet,
Puduchery 605005.

2.THE Government OF INDIA,
REP.BYITS SECRETARY MINISTRY

OF HOME AFFAIRS, J674 VGV,
NORTH BLOCK, CENTRAL SECRETARIAT,
NEW DELHI, DELHI 110 001. . ... Respondents
(R2-SUO MOTU IMPLEADED AS PER
ORDER DATED 04.12.2024 IN
WP.1879/2018 BY DEVJ)

Prayer in WP.No.1879/2018 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of CERTIORARI to call for the records of the respondent with No.170/PPCL/PDY/MD/Estt./2017-18 dated 17.01.2018 and to quash the same.

For Petitioner : Mr.L.Chandrakumar for
M/S.M.Gnanasekar
For Respondents : Mr.V.Chandrasekaran, SPC for R2

COMMON ORDER

The writ petitions in WP.Nos.2427 & 2428/2018 have been filed to call for the records pertaining to the order of the 4th respondent dated 3.5.2017 made in 5/5507/2016/PPCL/P5, so far as the members of the petitioner's union are concerned, and quash the same and consequently direct the respondents to continue to pay in the same pay scales granted to them by resolution dated 27.6.2014 made in item 110.15 with all consequential and monetary benefits. The Writ Petition in WP.No.1879/2018 has been filed to to call for the records of the respondent with No.170/PPCL/PDY/MD/Estt./2017-18 dated 17.01.2018 and to quash the same.

2. Heard Mr.L.Chandrakumar, learned counsel for the petitioner, Mr. P. S.Kothandaraman, learned Government Advocate for the respondents 1 to 4 and Mr.V.Chandrasekaran, learned standing counsel for the 5th respondent and perused the materials available on record.

3. The individual petitioner and the members of the petitioner's union are employees of the corporation. The employees' union represents the interests of the employees who are its members. The 1st respondent corporation has passed a resolution vide Resolution 110.15 dated 27.06.2014 for implementing the revised pay scale of group C employees of the corporation.

4. However, the 4th respondent, at the instruction of the 3rd respondent, had issued an official memorandum directing the 1st respondent/managing director of the corporation to downgrade the scale of pay for the categories mentioned in the memorandum and recover the excess amount already paid to them consequent to the up gradation of the pay. The petitioners have filed these writ petitions challenging the same and seeking appropriate directions.

5. From the submission of the learned senior counsel for the fifth respondent, it is learnt that the Government of Pondicherry has deferred to decide, for granting approval for the resolution of the first respondent dated 27.06.2014, awaiting approval from the Government of India. So it is submitted by the learned counsel for respondents 2 to 4 that the approval for the resolution of the 1st respondent can be given only if the Government of India also approves the proposal. As the Government of India has not granted its approval the 4th respondent has issued the impugned memorandum to the 1st respondent to downgrade the scale of pay of the employees. The above memorandum has been issued not only to downgrade the pay but also to recover the upgraded pay so far given to the employees.

6. The only impediment for the 2nd respondent to grant sanction and to withdraw the memorandum dated 3.5.2017 is to get the approval from the Government of India. An interim order of stay has already been granted to stop the recovery of the amounts so far disbursed to the employees pursuant to the resolution. As this Court thought that the Government of India is a necessary party for effective disposal of these writ petitions, the Government of India has also been impleaded *suo moto*.

7. The learned counsel for the 5th respondent /Government of India has submitted that certain clarifications have been sought from the Government of Pondicherry with regard to the above proposal, and the matter is pending for want of necessary details.

8. Since the matter involves the fundamental rights of the employees getting their rightful pay in accordance with the Board Resolutions passed by the 1st respondent. The 5th respondent can not sit on the matter indefinitely without making any decision. Unless a decision is taken by the Government of India, the 2nd respondent cannot grant approval. However, the 1st respondent continued to disburse the salary to the categorized employees on the basis of the up gradation as agreed in its resolution 110.5 dated 27.6.2014**.** Even from the date of resolution, 10 years has lapsed till then. It is disconcerting to note that neither the 2nd respondent has shown any urge to send repeated reminders or furnish the additional details for the purpose of getting approval from the Government of India, nor the Government of India had taken the matter seriously and compelled the 2nd respondent to come with the necessary papers.

9. So far as the employees are concerned, they are kept at dark, and they can not know what had happened between the Government of Pondicherry and the Government of India with regard to their right to get upgraded pay. If the salaries are already upgraded and it was being disbursed from the year 2014 and suddenly stopped in the year 2017, that will cause irreparable difficulties and affect the quality of life of the employees.

10. Hence, I feel the 2nd respondent and the 5th respondent should take up the matter urgently with all seriousness and pass appropriate orders for enabling the petitioners and the members of the employees' union to continue to avail the upgraded pay or any other betterment in the matter of pay in accordance with the decision taken by the Government of Pondicherry and the Government of India. Since the 1st respondent corporation itself thought it fit to upgrade the pay of the employees by considering all the relevant facts and circumstances, there will not be any difficulty for the 2nd respondent or the 5th respondent to grant approval.

11. So far as the recovery part is concerned the position of law on this point has already been settled by the Hon'ble Supreme Court in the case of S***tate of Punjab & Others Vs. Rafiq Masih (White Washer)*** reported in (***2015) 4 SCC 334.*** It is held that there are certain situations in which recoveries could not be made by the employers. Those impermissible circumstances are crystallised under paragraph No.12 of the above judgement, which is extracted as under:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

12. In the instant case, the 1st respondent corporation had taken a policy decision to revise the pay scale of group 'C' employees of the corporation by giving notional effect from the date of implementation of the 5th Pay Commission implementation. Only in view of that the employees of the 1st respondent corporation were getting their revised pay. Instead of granting approval by considering the decision taken by the corporation, the Government of India has been silent and that had resulted in passing an another resolution by the 1st respondent corporation to cancel the resolution and to refix the pay by downgrading the same.

13. In fact the employees of the 1st respondent corporation are victims and their condition is pitiable. They could not understand why they are not eligible to get the revised pay. The order of recovery as against the employees of the 1st respondent corporation in view of the changed stand is not due to any fault on the part of the employees. The recovery has been made as against the employees who belongs to group 'C' . Even for the sake of argument if the employees do not belong to group 'C', every employee is entitled to get his pay revised in a periodical manner. Withdrawing the above benefit after having allowed them to enjoy the same would not only harsh and iniquitous but also unfair.

14. The employer cannot claim that they have the right to recover as it is bound to justify the right to the Government and as to why its employees are entitled to get the revised pay. Some of the employees have been promoted and they have been discharged in the higher posts and they have been getting revised pay corresponding to the said posts. When the pay for the employees are revised taking into account of hike in the cost of living, the increase in price for getting commodities and services would affect the quality of life of the employees. Further, they would have already spent the upgraded pay to meet out their essential requirements.

15. Under such circumstances, the downgrading their pay itself is unfair and it would be doubly unfair and harsh to recover the upgraded pay so far paid to the employees. So the equitable balance lies only in favour of the employees and hence in all fairness the order of recovery made against the employees of the 1st respondent corporation is impermissible and hence not legal.

In view of the same,

(i) These writ petitions are **disposed** by directing the 2nd and 5th respondents to take whatever action that can be taken at their end at the earliest possibility and pass orders within a period of 8 weeks from the date of receipt of a copy of this order in order to enable the petitioners and the members of the petitioners' union to continue to get their upgraded pay as per the 1st respondent's Board Resolution No.110.15 dated 27.6.2014.

(ii) As the impugned order passed by the 4th respondent dated 03.05.2017 made in No.A/55011/07/2016/PPCL/P5 in WP.Nos. 2427 &2428 of 2018 and the impugned order dated 17.01.2018 No.170/PPCL/PDY/MD/Estt./2017-18 passed by the first respondent in WP.No.1879 of 2018 that have been issued so far it relates to the recovery of the upgraded pay already granted to the petitioners and the members of the union is illegal, the same are set aside to that extent of recovery alone.

(iii)There shall be no order as to costs.

(iv) Consequently, the connected miscellaneous petitions are also closed.

25.04.2025

Internet : Yes/No
Speaking/Non- Speaking
Neutral: Yes/No
jrs

To
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24.05.2025