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WP No. 21932 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-02-2025

CORAM

THE HONOURABLE MRS JUSTICE N. MALA

**WP No.21932 of 2021
and WMP.No.23137 of 2021**

E.Dhayalan

Petitioner(s)

Vs.

1.The Chief Engineer/Distribution
Vellore Electricity Distribution
Circle, Gandhi Nagar,
Vellore.

2.The Superintending Engineer,
Vellore Electricity Distribution
Circle, Gandhi Nagar,
Vellore.

3.The Executive Engineer (O&M),
Vellore Electricity Distribution
Circle, Gandhi Nagar,
Vellore.

Respondent(s)

PRAYER



Writ Petition is filed under Article 226 of the Constitution of India, issuing a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned orders passed by the second respondent in Memo No.013659/356 Ma.Po.Va/NI.Pi.2/U.1/2021, dated 16.09.2021 and consequential order in Memo No.013553/356/Admn.2/A.2/2021, dated 24.09.2021 and quash the same and consequently direct the respondents to restore the old pay.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.C.Manoharan
Standing Counsel for TNEB

* * * *

ORDER

This Writ Petition is filed to call for the entire records connected with the impugned orders passed by the second respondent in Memo No.013659/356 Ma.Po.Va/NI.Pi.2/U.1/2021, dated 16.09.2021 and consequential order in Memo No.013553/356/Admn.2/A.2/2021, dated 24.09.2021 and quash the same and consequently direct the respondents to restore the old pay.

2.The petitioner was appointed as Helper in the respondent Board and



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joined the said post on 08.09.1987, in the Construction and Improvement Department at, Chenganatham. The petitioner was promoted as Foreman, after completion of seven years of service as Helper on 30.06.2010. Thereafter on completion of nine years of satisfactory service, the petitioner was sanctioned Selection Grade Foreman, as per Board Proceeding dated 26.09.2019, passed by the second respondent with effect from 30.06.2019 and the petitioner's pay was fixed in the post of Selection Grade. In the meanwhile, the petitioner's name was included in the panel for promotion to the post of Special Grade Foreman and the second respondent issued posting orders vide memo dated 28.06.2019. The said order was communicated to the petitioner through the third respondent on 03.07.2019. The petitioner was relieved from service on 03.07.2019, and joined as Special Grade Foreman on, 11.07.2021. Whiles, after a lapse of two years, the third respondent vide memo dated 17.07.2021, directed the petitioner to refund the excess amount of Rs.1,09,629/- paid as Special Grade Incentive and informed the petitioner that the said amount would be deducted from his salary from July 2021, onwards. The petitioner immediately sent a reply on 17.07.2021, stating that the sanction of Selection Grade to him was proper and



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further requested the second respondent to drop the recovery proceedings. The second respondent without considering the petitioner's reply issued a prefatory order of recovery dated 24.09.2021, and consequential order re-fixing the scale of pay from 88,600/ to 83,500/-. Impugning the aforesaid orders of the second respondent, the petitioner has filed the above writ petition for the aforesaid relief.

3.The respondents filed a detailed counter and submitted that the petitioner after completion of nine years of service in the Foreman post, as per B.P.(FB) No.12(SB) dated 08.02.2006, was moved to selection grade post vide order in M.No.008720/888-1/EE/O&M/VLR/A.2/F.S.G. Pay fix/19, dated 26.09.2019 and his pay was fixed in the post of selection grade foreman with effect from 30.06.2019 F.N. In the meanwhile, the petitioner's name was included in the panel for promotion to the post of Special Grade Foreman. The petitioner was promoted, posting orders were issued vide memo dated 28.06.2019, and the petitioner was posted at 230 KV SS/Maintenance/Thiruvallam. The order was communicated to the petitioner

through the third respondent's letter dated 03.07.2019, and the petitioner was



relieved on 04.07.2019, in the office of Junior Engineer / O&M /
Salvanvanpet/Vellore. The petitioner joined as Special Grade Foreman on

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11.07.2019 forenoon. The respondents submitted that the Assistant Audit Officer/Vellore objected to the grant of special grade incentive to the petitioner vide Audit Slip No.24, dated 25.03.2021. The Audit Officer stated that on review of the service book along with FCR of the petitioner, it was noticed that the Selection Grade pay to the petitioner was admitted in the post of Foreman, after the issue of promotion order to the post of Special Grade Foreman and so the same was improper. The Audit Officer therefore directed that the Selection Grade Incentive increment had to be cancelled and the excess payment of pay and allowance of Rs.1,09,629/- was to be recovered from the petitioner and his pay refixed from Rs.88,600/- to 83,500/-. According to the respondents, as per the Board memo dated 25.09.2018, the employees to whom the Selection Grade increment was granted after the issuance of promotion orders needed to be cancelled, and the excess amounts paid had to be recovered immediately. The respondents submitted that as the petitioner's Selection Grade increment was paid after the promotion order was passed the same was against the aforesaid



Board memo. The respondents therefore submitted that there were no merits in the writ petition and the same deserved to be dismissed.

4.The learned counsel for the petitioner submitted that the impugned orders of recovery and refixing the scale of pay of the petitioner were arbitrary, illegal, unreasonable and unsustainable in law. The learned counsel submitted that the impugned order passed by the second respondent was in utter violation of principles of natural justice in as much as, before passing the impugned orders of recovery and refixation of petitioner's pay, no show cause notice was issued and no opportunity was provided to the petitioner. The learned counsel submitted that on the said ground the impugned orders were liable to be set aside.

5.I have heard both the learned counsels and I have perused the materials placed on record.

6.It is seen that the impugned orders were passed without issuing show



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cause notice to the petitioner and without affording an opportunity of hearing to

him to submit his defence to the recovery and refixation of pay. The impugned

order of recovery and refixation of pay has civil consequences and therefore the

least the second respondent could have done was to issue notice and afford

opportunity of hearing to the petitioner before passing the impugned orders. In

my view, when the impugned order is visited with civil consequences resulting

in huge monetary loss to the petitioner adherence to the principles of natural

justice is mandatory. As the impugned orders were passed without any show

cause notice and without an opportunity of hearing to the petitioner, in my view

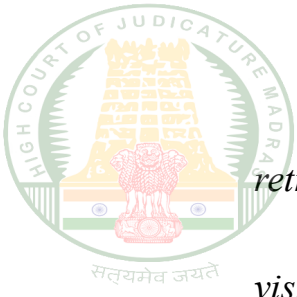
the same cannot be sustained and hence the same is set aside. I draw support

from the dictum of the Hon'ble Supreme Court in the case of *Bhagwan Shukla*

S/O Sh. Sarabjit Shukla vs Union Of India And Ors reported in **1994(6) SCC**

154 wherein the Apex Court held as follows:

“We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs.190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs.181 p.m. from Rs.190 p.m. in 1991



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retrospectively w.e.f. 1812.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not, even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter.”

In view of the above discussions, the impugned order is set aside and the matter is remitted to the second respondent for fresh consideration. The second respondent shall issue show cause notice to the petitioner, afford opportunity of hearing and thereafter pass the orders on merits and in accordance with law,



within a period of eight weeks from the date of receipt of a copy of this order.

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7. Accordingly, this writ petition is allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

26-02-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

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N.MALA J.

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