



W.P.(MD)No.2845 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 29.10.2024

PRONOUNCED ON : 27.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.2845 of 2021

and

W.M.P.(MD)No.24965 of 2023

K.Kulandai Xavier

... Petitioner

Vs.

- 1.The Chairman,
Tamilnadu Electricity Board,
Anna Salai,
Chennai-600 002.
- 2.The Chief Engineer/Personnel,
Tamilnadu Electricity Board,
Anna Salai,
Chennai-600 002.
- 3.The Superintending Engineer,
Trichy Electricity Distribution Circle,
Tamilnadu Electricity Board,
Trichy.
- 4.The Superintending Engineer,
Tamilnadu Electricity Board,
Ramanathapuram Electricity
Distribution Circle,
Ramanathapuram.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to impugned order passed by the 3rd respondent in Proceeding Ku.No.654/Ni.Pi.2/E.Ni.U/Ko.Oothiya Muranpadu/2020 dated 27.11.2020 and quash the same and consequently direct the respondent to rectify the anomaly in the scale of pay of the petitioner and fix the scale of pay of the petitioner on par with his Junior S.Thandayuthapani with all attendant benefits including the arrears of salary and allowances.

For Petitioner : Mr.N.Mohideen Basha

For Respondents : Mr.B.Ramanathan,
Standing counsel

ORDER

The petitioner was appointed as a Field Assistant on 11.11.1987 in the 4th respondent Board and was regularised in service on 06.03.1991 and in the seniority list, the petitioner was placed in S.No. 121. Similarly, one of the petitioner's junior namely S.Thandayuthapani was also appointed as a Field Assistant on 11.11.1987 in the same Electricity Board, the 4th respondent has regularised his service and his seniority was placed in S.No.140. Thereafter, the petitioner was promoted as a Commercial Assistant on 06.10.1997 and subsequently promoted as a Commercial Inspector on 16.09.2005 and further as a



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Foreman-Grade I on 08.07.2013 and Foreman – Special Grade on 30.03.2020 and after attaining the age of superannuation, he retired from service as on date.

2.The plight of the petitioner is that his junior S.Thandayuthapani is drawing more salary than the petitioner. As a result of which, he sent a representation to the respondents 3 & 4 to 6 to rectify the pay anomaly. However, the said representation was rejected by passing the impugned order by the 3rd respondent on 27.11.2020. Challenging the same, the present writ petition has been filed.

3.The learned counsel for the petitioner pointed out that the impugned order has been passed on the sole ground that the petitioner was promoted to the post of Commercial Assistant on 06.10.1997, within a period of 10 years from the date of his appointment and even before obtaining Selection Grade. However, his junior S.Thandayuthapani acquired selection grade on 12.11.1997 and thereafter, obtained promotion on 01.01.1998. In view of the same, there was a difference in pay between them. The said S.Thandayuthapani was placed well below the petitioner's rank. While, the petitioner was placed in S.No.121, whereas, S.Thandayuthapani was placed in S.No.140 in the seniority list maintained by the



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respondent Board. In view of the same, he is entitled for equal pay as that of his junior and his pay should be stepped up on par with the junior and pressed for quashing the impugned order.

4.The learned Standing Counsel appearing for the respondents relying upon the counter affidavit filed by the 3rd respondent submitted that, the petitioner has been transferred from Sivagangai Electricity Distribution Circle to Trichy Distribution Circle. As a result of which, he lost his seniority and he was automatically placed as a last person in the seniority maintained in the Trichy Distribution Circle and hence, he cannot claim pay parity between himself and S.Thandayuthapani, who has been serving in another Electricity Distribution Circle. The petitioner has lost his seniority in view of transfer from Sivagangai to Trichy Distribution Circle. It is clear from the counter affidavit filed by the 3rd respondent that the writ petitioner was a person, who was appointed on the same day along with his junior S.Thandayuthapani as Field Assistant on 11.11.1987. He pressed for dismissal of the writ petition.

5.Heard the learned counsel appearing for the petitioner, the learned Standing Counsel appearing for the respondents and carefully perused the materials available on record.



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6.This court has dealt with a similar issue in the case of **N.Premkumar .vs. The Government of Tamilnadu dated 18.02.2022** and the relevant portion of the same is extracted as follows:

“4. In service jurisprudence, it is a settled proposition of law that when two Government employees hold the same post, the senior cannot be paid a lesser salary than the junior and in case the junior is getting more pay, the department is bound to step up the pay of the senior on par with his junior, with effect from the date on which the anomaly arose. In this case, the anomaly arose on 01.01.1996 and therefore, the decision of the respondents in notionally stepping up the pay with effect from 01.01.1996 but granting the monetary benefits from 01.09.1998, is opposed to the settled proposition of law.

5. Fundamental Rule 22B came up for consideration before an Hon'ble Division Bench of this Court in the case of R.Ramaraj Vs. The Registrar General, High Court of Judicature at Madras and another reported in 2014 SCC Online Mad 8740 and by placing reliance on the Fundamental Rules, the Division Bench had set right the anomaly between the pay scales of a senior and a junior. The relevant portion of the order reads as follows:-

"11. Further, Fundamental Rule 22-B(2) can be relied on for stepping up of the pay of the petitioner on par with his



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and 27 if we analyse, eligibility of the petitioner to step up his pay on par with the 2nd respondent is beyond doubt.

12. The Hon'ble Supreme Court in the decision reported in (2009) 3 SCC 94 (Gurcharan Singh Grewal and another v. Punjab State Electricity Board and others) has considered the similar issue and held that it is a settled principle of law that senior cannot be paid a lesser salary than his junior and if junior is given more pay, the department is bound to step up the pay of senior on par with his junior."

Thus, the proceedings of the second respondent dated 07.02.2008, which grants the monetary benefits from 01.09.1998, cannot be sustained and that the petitioner would be entitled for the monetary benefits from 01.01.1996 onwards."

6. In the light of the above observations, the impugned orders dated 07.02.2008 and 14.06.2012 are quashed."

7. In the instant case, both the petitioner and Thiru.S.Thandayuthapani were holding the same posts. However, the petitioner who is the senior was paid a lesser salary than his junior Thiru.S.Thandayuthapani. Hence, the petitioner is entitled to get his pay stepped up on par with the pay of Thiru.S.Thandayuthapani with effect from the date on which the anomaly arose. The anomaly arose on 01.01.1998, when the junior of the petitioner, namely, Thiru.S.Thandayuthapani was promoted to the post of commercial assistant. Relying upon Rule 22-B (2) of the Fundamental Rules, 1922, and fully fortified by the order extracted supra, the impugned



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proceedings of the third respondent dated 27.11.2020 bearing Ku.No. 654/Ni.Pi.2/E.Ni.U/Ko.Oothiya Muranpadu/2020 is hereby quashed.

Consequently, the third respondent herein is called upon to consider the claim of the petitioner in the light of the observations made in this order and pass appropriate orders stepping up the pay of the petitioner on par with his junior, granting monetary benefits to the petitioner with effect from 01.01.1998. The third respondent shall endeavor to pass orders within a period of four (4) weeks from the date of receipt of a copy of this order.

8. Accordingly the writ petition stands allowed. No costs. Consequently connected miscellaneous petition is closed.

27.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml



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To

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Ramanathapuram Electricity
Distribution Circle,
Ramanathapuram.



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L.VICTORIA GOWRI, J.,

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