



W.P.(MD).No.7322 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.08.2025

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.(MD).No.7322 of 2019

and

W.M.P.(MD)Nos.5843 to 5845 of 2019

M.Durai

... Petitioner

Vs.

1.The Chief Engineer/Personnel,
Tamil Nadu Generation and
Distribution Corporation Ltd., (TANGEDCO),
No.144, Anna Salai,
NPKKR Maligai, Chennai-2.

2.The Superintending Engineer,
Tamil Nadu Generation and
Distribution Corporation Ltd., (TANGEDCO),
Sivagangai Electricity Distribution Circle,
Sivagangai.

3.The Executive Engineer,
Distribution/Karaikudi,
Tamil Nadu Generation and
Distribution Corporation Ltd., (TANGEDCO),
Karaikudi, Sivagangai District.

4.The Assistant Audit Officer,
AP6/Audit Branch,
Tamil Nadu Generation and
Distribution Corporation Ltd., (TANGEDCO),
K.Pudur, Madurai.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Board's proceedings in (Per) BP.(Ch) No.17 (Administrative Branch) dated 08.03.2010 passed by the 1st respondent and consequential orders passed by the 4th respondent in Audit Slip No.13 dated 16.02.2019 and order of 3rd respondent in Ref.Ku.Aa.No.Se.Po/Pa/Kaarai/Ka.Me/Kho.Thanikkai/A.No. 459/2019 dated 13/14.03.2019, quash the same.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.C.M.Mari Chelliah Prabhu

ORDER

The petitioner herein, who is working as Assistant, has filed this Writ Petition challenging the refixation and consequential recovery order passed by the respondents.

2. According to the petitioner, originally, he was appointed as Helper in the first respondent Corporation on 12.03.1999 and subsequently, he was promoted to the post of Record Clerk with effect from 18.06.2004. While in service, the first respondent had conducted an in-service recruitment and accordingly, the petitioner was selected to the post of Junior Assistant in Class III service in the administration line by order dated 21.05.2007. As per the then



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prevailing Board Proceedings in B.P.No.1300 dated 30.07.1979, the persons, who were appointed as Junior Assistant, are entitled for additional benefits as per Regulation 33(b) of the TNEB Service Regulations. As per the said regulation, the petitioner is entitled for initial pay in the time scale of higher post fixed at the stage next above. Subsequently, by issuance of B.P.(Ch)No.17 dated 08.03.2010, the Board has decided to withdraw the application of Regulation 33(b) extended to the post of Junior Assistant (Administration).

3. Consequently, during the audit inspection, the audit slip was issued and the petitioner's pay was revised withdrawing the benefits extended to the petitioner at the time of his appointment as Junior Assistant, which resulted in recovery order claiming excess pay of Rs.1,72,455/-. Challenging the same, this Writ Petition has been filed.

4. The learned counsel for the petitioner submits that the petitioner was promoted and availed pay benefit from the year 2007 onwards. Only in the year 2010, the Board has decided to withdraw that benefit. However, this could not be made applicable to the petitioner herein since this amendment to the Rule was made subsequently and the vested rights of the petitioner could not be withdrawn by way of subsequent amendment.



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5. Per contra, the learned counsel for the respondent Board reported that only based on the amendment, the audit slip issued, the impugned order has been passed and the same is not in violation of the rights of the petitioner and the petitioner is not entitled for accelerated rate of pay at the time of his appointment as Junior Assistant. The learned counsel also relied on the judgment of the Division Bench of this Court in the case of ***K.Ambika Boopathy Vs. The Chairman, Tamil Nadu Electricity Board and others*** in ***W.A.No.2773 of 2024 dated 14.10.2024*** to buttress his arguments.

6. I have considered the submissions made on both sides and also perused the materials available on record.

7. The judgment relied on by the learned counsel for the respondent in *K.Ambika Boopathy's* case cited supra is not applicable to the facts of this case, since the order impugned therein is only recovery proceedings and not regarding pay revision and it is also specifically observed in paragraph 3 to 6 as follows:

“3. The learned counsel for the appellant has submitted that the writ court by relying upon the order of this Court made in W.P.No. 25240 of 2010, dated 16.10.2012, had disposed of the writ petition filed by the appellant herein. In the said decision, the



writ court has not considered the applicability of Rule 33(b) of Tamilnadu Electricity Board Service Regulations, therefore impugned order of the writ court is liable to be set aside.

4. On the other hand, the learned standing counsel for the respondent would submit that the writ court has passed the impugned order only based on the decision of this Court which was relied by petitioner/appellant herein before the court, therefore the appellant cannot challenge the impugned order passed by the writ court in the present appeal.

5. Heard the learned counsel appearing for the appellant and the learned standing counsel appearing for the respondents and perused the materials available on record.

6. A perusal of the records reveals that the appellant/writ petitioner did not raise any specific objections before the writ court regarding the reliance on the decision in W.P. No. 25240 of 2010. Furthermore, it is specifically mentioned in the impugned order that, based on the submissions made by the learned counsel for the writ petitioner, the writ court relied the decision made in W.P. No. 25240 of 2010, dated 16.10.2012, and disposed of the writ petition. Therefore, at this stage, the grounds raised by the appellant that the writ court had wrongly relied on the decision in disposing of the writ petition cannot be considered.”



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8. It is settled law that once the benefit is extended, it cannot be taken away by way of subsequent amendment or modification. In this case, in the Board Proceedings in B.P.No.1300 dated 30.07.1979, the Board has taken a decision in the concluding paragraph, which reads as follows:

“The T.N.E.B. after careful consideration now directs that the Record-Clerks and Office Helpers who have been appointed as Junior Assistants with reference to Regulation 92, note 2 under division VII of Class III in Annexure – I to the T.N.E.B. Service Regulations shall be allowed fixation of pay under Regulation 33(b) of the T.N.E.B. Service Regulations, since the post of J.A. carries higher duties and responsibilities, than the Record Clerk and Office Helper.”

This extension of Regulation is applied to the petitioner on his appointment as a Junior Assistant in the administration by proceedings dated 21.05.2007. It has been specifically captured in the appointment order also. The said proceedings is scanned and extracted hereunder:



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TAMIL NADU ELECTRICITY BOARD
Office of the Superintending Engineer,
Sivaganga Elcty.Distn.Circle/Sivaganga.

Mem.No.06520/1867/Adm./Adm.1/A.1/2007, dt.21.05.2007.

Sub: Estt. - Appointment of Class IV Service employees (ie) Record Clerks and Office Helpers by Recruitment to the post of Junior Assistants in Class III Service - Reporting orders - Issued - Regarding.

Ref: (Per) U.P. No. (Ch) No.152/Adm.Br./ dt.5.12.2007.

The following employees are appointed as Junior Assistant/Administration by Recruitment from Class IV Service with reference to the provision in Note-2, Division VII to Annexure-1 Regulation 92 of TNES Service Regulation and allotted to this circle vide reference cited in the time scale of pay of Rs.5370-1000-6370, are reported to the places noted against them in Column No. 5 against the existing vacancies.

Sl. No.	Name & Date of Birth	Place in which now working	Place to which reported	Officer to whom to join duty (S)
(1)	(2)	(3)	(4)	(5)
	Thiruvallur			
1.	H.Durai 19.05.1979	Record Clerk C.O./Sivaganga	Central Office/ Sivaganga	Asst.Adm. Officer/C.O./ Sivaganga.
2.	S.Karagavalli 18.05.1956	Record Clerk RR/Sivaganga	O/o Asst. Exe. Engineer/Distn./ Thiruppathur	Asst.Exe. Engineer/O/ Thiruppathur
3.	G.Kalaisvani 19.05.1977	Office Helper/ Division Office/ Sivaganga	O/o Asst. Exe. Engineer/Distn./ Sivaganga	Asst.Exe. Engineer/O/ Sivaganga.
4.	U.Jeyalakshmi 06.05.1978	Office Helper/ Division Office/ Karalkudi	Division Office/ Karalkudi	Exe.Engineer/ Distn./ Karalkudi.
5.	S.Arockiaswary 05.01.1978	Office Helper/ C.O./Sivaganga	Central Office/ Sivaganga	Asst.Adm. Officer/C.O./ Sivaganga.

..2..



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12/

They should report for duty to the concerned officer as noted in column No.5 after getting proper relief from their present station.

The Record Clerks and Office Helpers who have been appointed as Junior Assistant (Adm.) with reference to 52 Note-2 under Division -VII of Class III in Annexure-1 to the TNES Service Regulation shall be allowed fixation of pay under regulation 33(b) of TNES Service Regulation, since the post of Junior Assistant carries higher duties and responsibilities, than the Record Clerk and Office Helper.

They are also instructed to submit the Physical Fitness Certificate duly filled in and attested by Government Medical Officer to the rank of Civil Assistant Surgeon at the time of join duty.

Any modification or cancellation will not be entertained.

Encl: Physical Fitness
Certificate.

9-12
SUPERINTENDING ENGINEER
SEDC, SIVAGANGA.

To
The above individuals.
Through the Concerned Officer.

Copy to Asst. Adm. Officer/C.O./Sivaganga. (**)
Copy to Adm. Supervisor/Adm. I/C.O./Sivaganga.
✓ Copy to Deputy Financial Controller/C.O./Sivaganga.
Copy to Executive Engineer/Distrn./Sivaganga. (**)
Copy to Asst. Exe. Engineer/Distrn./Sivaganga.
Copy to Executive Engineer/Distrn./Thiruppathur. (**)
Copy to Asst. Exe. Engineer/Distrn./Thiruppathur.
Copy to Executive Engineer/Distrn./Karakudi. (**)
Copy to Adm. Supervisor/ETA/C.O./Sivaganga.
Copy submitted to the Chief Engineer/Distribution/Madurai.
- for kind information please.
Copy submitted to the Chief Engineer/Personnel/Chennai.
- for kind information please.
Copy to Stock File.

(**) Note:

They are also requested to ensure before appointments orders are issued to the individuals that they are not involved in any D.P. and are not undergoing punishment. The date of relief and joining of Junior Assistant (Adm.) may be reported to this office early please.

s. s. s. s. s.

pm/21-3.



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9. The application of Regulation 33(b) of the Tamil Nadu Electricity Board Service Regulations to the persons appointed as Junior Assistant/Accounts was once again reiterated in the Board Proceedings in (Per)B.P.Ms.(CH)No.184 dated 28.06.2007. Subsequently, on 08.03.2010, by issuing (Per)BP(Ch)No.17, there was an amendment made to the Regulation 33(b), which reads as follows:

“The Tamil Nadu Electricity Board is hereby decided that the internal selection is not a promotion and for fixation of pay the the orders issued in (Per.) B.P (FB) No.95, dated 20.11.1985 is allowed to the employees who have been appointed as Junior Assistant/Administration and Accounts from the Cadre of Records Clerks and Office Helpers in Class IV Service. Hence, the (Per.) B.P (Ch.) No.152 (Adm.Br) dated 05.05.2007 and (Per) B.P.(Ch.)No.184 (Adm.Br) dated 28.06.2007 which was already issued is hereby withdrawn.”

This amendment reveals that the Board has amended the Rules to withdraw (Per)B.P.Ms.(Ch.)No.184 (Adm.Br) dated 28.06.2007.

10. The facts discussed above show that the respondents have decided to withdraw the benefit of extending Regulation 33(b) of the Service Regulations to the persons, who were appointed as Junior Assistant, in the year 2010, i.e., by issuing (Per)B P(Ch)No.17 dated 08.03.2010.



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11. Now, the question arises whether this Board Proceedings would be made applicable retrospectively. The issue regarding the application of the Government Orders or amendments would be made applicable retrospectively or prospectively was already settled in many cases. Recently, the Hon'ble Apex Court in the case of ***Sree Sankaracharya University of Sanskrit and others Vs. Dr.Manu and another***, reported in **2023 (3) CTC 802**, has considered the query whether the Government Order issued thereon is made applicable retrospectively from the date on which the previous order, which is sought to be clarified, came into effect. After considering various judgments of the Apex Court in paragraph 8.1, the Apex Court answered in in paragraph 9.2 as follows:

“9.2. From the aforesaid authorities, the following principles could be culled out:

i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.

ii) In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.

iii) An explanation/clarification may not expand or alter the scope of the original provision.



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iv) Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.”

12. In this case, admittedly, the amendment was issued in the year 2010 and it does not contain any express provision that the amendment provision is applicable retrospectively.

13. Similarly, it is also settled law that any Government Order or provision, which has already extended any benefit could not be withdrawn by way of making amendment unless there is a specific clause containing the same. In this case, as stated above, there is no clause prescribing date of application of amendment. The petitioner herein is enjoying the benefit of Regulation 33(b) from the year 2007 onwards and since his service benefits could not be taken away by way of amendment, the order passed by the respondents is not sustainable in the eye of law and the same is liable to be set aside. Accordingly, the impugned orders of re-fixation of salary and recovery dated 16.02.2019 and



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14.03.2019 passed by the respondents are set aside and the Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

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K.RAJASEKAR,J.

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