

(2009) 03 AP CK 0058

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1163 of 2009

L.V.V. Satyanarayana Rao

APPELLANT

Vs

The A.P. Eastern Power Distribution Company Limited

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2009) 3 ALD 814 : (2009) 6 ALT 374

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : V. Venkataramana, for the Appellant; P.R. Balaramy Reddy, SC for AP Transco, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—The petitioner joined the service in the erstwhile A.P. State Electricity Board on 08.12.1979 as Helper. He was promoted as Instrument Mechanic (Grade-III) on 29.01.1998, as a Tester (Grade-II) on 03.03.1999 and as a Tester (Grade-I) on 01.07.2005. Presently he is working as Tester (Grade-I) under the control of the Divisional Engineer, Transformers, the A.P. Eastern Power Distribution Company limited, Eluru, West Godavari District-3rd respondent. The 3rd respondent issued Memo. No. DE/M&P/ELR/ JAO/ADM/UDC/D. No. 449/07, dated 17.12.2007, whereunder the petitioner was informed that his pay was wrongly fixed in the cadre of Instrument Mechanic (Grade-II) and sought to recover excess payment made to him. He was informed that the Tester Instrument Mechanic (Gr.-III) and the Tester Instrument Mechanic (Grade-II) were brought under common pay scale with effect from 01.04.1998 and therefore, fixation of his pay in the cadre of Instrument Mechanic (Grade-II) treating it as a promotion post from Instrument Mechanic (Grade-III) was not correct and therefore, the proceedings issued in Memo. No. DE/TRS/ELR/JAO/U/ D. No. 59/99, dated 05.05.1999 were to be cancelled. His revised pay fixation particulars were communicated to him vide Memo. No. DE/TRS/ELR/JAO/U/D.

No. 192/08, dt. 05.06.2008. He submitted representation dated 13.06.2008 recording his objections for revision of his pay scale after lapse of 9 years. The 3rd respondent considered the representation and proceeded to issue Memo, dated 26.11.2008 revising pay of the petitioner and ordering recovery of excess amount of Rs. 1,02,408/- in equal monthly instalments at the rate of Rs. 8,534/- commencing from January, 2009 vide Memo. No. DE/TRS/ELR/JAO/U/D. No. 794/08, dated 29.12.2008. The petitioner filed this writ petition assailing the proceedings issued by the 3rd respondent vide Memos, dated 17.12.2007 and 29.12.2008. For better understanding the grievance of the petitioner, I deem it appropriate to refer para.3 of the affidavit filed in support of the writ petition, which reads as hereunder:

While matter stood thus, vide impugned memo dated 17.12.2007, the 3rd respondent had informed me that my pay scale is revised with effect from 12.03.1999 and that excess amount paid to me will be recovered without any further notice. I submit that I had submitted a representation to the 3rd respondent contending that my scale of pay cannot be changed without giving opportunity to me and without enabling me to contest the same. However, the 3rd respondent had again issued the impugned memo date 29.12.2008 to the effect that my promotion orders from instrument Mechanic Grade - III to Grade-II were modified as conversion orders since I was not eligible as the two cadres brought into one time scale with effect from 01.04.1998 and that my promotion pay fixation orders with effect from 12.03.1999 was cancelled and hence I was paid excess amount of Rs. 1,02,408/-, which will be recovered from my salary at the rate of Rs. 8534/- per month commencing from January, 2009. I submit that the impugned memo of the 3rd respondent is arbitrary and irrational, apart from being violative of principles of natural justice. I submit that I was never given a show cause notice nor any understandable details as to how I was excess paid after my promotion and as to when it was discovered. It is settled legal position that the employer has no authority of law to recover the salary paid on the ground of excess payment of salary for several years and such an action is not only illegal but also violative of Article 21 of the Constitution of India. Since the recovery is being enforced against me from the salary of January, 2009, I am constrained to file this writ petition.

2. When the writ petition came up for admission, Sri P.R. Balarami Reddy, learned Standing Counsel for A.P.E.P.D.C.L. received notice on behalf of the respondents.

3. The 3rd respondent filed counter-affidavit. It is stated in the counter-affidavit that the petitioner was put on notice before rectification of the mistake in fixation of his pay scale in the cadre of Instrument Mechanic (Grade-II). It is further stated in the counter-affidavit that all 7 cadres viz., Filter Mechanic, IM Grade-III, Mechanic Grade-IV, Filter Operator, IM Grade-II, Tester Grade-II and Lineman were merged into one common group and the common time scale was granted in the revised pay scales with effect from 01.04.1998 vide B.P.M.S.No.255, dated

05.01.1999 and that after 01.04.1998, Instrument Mechanic (Grade-III) and Tester (Grade-II) posts are in one time scale. The Instrument Mechanic (Grade-III) post is not at all a feeder post for promotion to the post of Tester (Grade-II) after 01.04.1998. The Instrument Mechanic (Grade-II) and Tester (Grade-II) are identical and are feeder posts for promotion to the post of Tester (Grade-I). In a way, the respondents contended that the pay of the petitioner came to be revised after putting him on notice and excess amount paid to him was sought to be recovered at the rate of Rs. 8534/- p.m. commencing from January, 2009.

4. When the writ petition came up for admission hearing, with the consent of learned Counsel appearing for the parties, it is taken up for final disposal.

5. Heard Sri Vedula Venkata Ramana, learned counsel appearing for the petitioner and Sri P.R. Balarami Reddy, learned Standing Counsel appearing for the respondents.

6. Sri Vedula Venkata Ramana, learned Counsel appearing for the petitioner submits that the petitioner was not served with the particulars of excess payment made to him due to re-fixation of his pay in Instrument Mechanic (Grade-II) and thus it amounts to violation of principles of natural justice and that itself is sufficient to set aside the proceedings impugned in the writ petition. He further submits that the respondents cannot be permitted to revise the pay scale of the petitioner after lapse of 9 years. He would also contend that the representation of the petitioner dated 13.06.2008 was not taken into consideration while revising his pay scale and ordering for recovery of excess amount allegedly made to the petitioner and therefore, the proceedings impugned in the writ petition are liable to be set aside.

7. Sri P.R. Balarami Reddy, learned Standing Counsel appearing for the respondents submits that the pay of the petitioner has been wrongly fixed by the Department in the cadre of Instrument Mechanic (Grade-II) treating it as a promotion from the post of Instrument Mechanic (Grade-III) and this mistake has been noticed and pay has been re-fixed in the cadre of Instrument Mechanic (Grade-II) after putting the petitioner on due notice and furnishing the necessary particulars. He would also submit that consequent of 7 cadres bringing into one common cadre of pay scales with effect from 01.04.1998, the pay of the petitioner fixed in the year 1999 in the cadre of Instrument Mechanic (Grade-II) treating it as a promotion post is contrary to the B.P.M.S. No. 255, dated 05.01.1999 and it necessitated the 3rd respondent to re-fix the pay of the petitioner. 8. There is no much controversy with regard to the 7 cadres being brought under common scale of pay with effect from 01.04.1998. Instrument Mechanic (Grade-III) and Tester (Grade-II) posts were brought under common pay scale and they are treated as feeder posts for promotion to the post of Tester (Grade-I) with effect from 01.04.1998. It can be said without any controversy that fixation of pay of the petitioner in Instrument Mechanic (Grade-II) treating it as a promotion post from Instrument Mechanic (Grade-III) is contrary to the B.P.M.S. No. 255, dated 05.01.1999. The question that falls for consideration is

whether the petitioner was put on notice before re-fixing his pay in the post of Instrument Mechanic (Grade-II). Much argument has been advanced by the learned Counsel appearing for the petitioner that the petitioner was not furnished with the particulars with regard to excess amounts paid to him by the department. I do not see any substance in his contention since the Memo, dated 26.11.2008 served on him contains endorsement of the petitioner to the effect that he received a copy of it under protest. The details of excess amount paid to him were enclosed to the said Memo. The text of the memo, dated 26.11.2008 served on the petitioner on 06.12.2008 reads as hereunder:

Adverting to the reference 5th cited above the following documents are herewith enclosed as requested by Sri LW Satyanarayana, Tester Gr.I.

- 1) Copy of O&M posts sanction in MRT/Eluru.
- 2) Copies of approved DPCs from 1998 to 2008.
- 3) Copy of B.P.Ms.No.255, dt. 5-1-99. (Revised pay scales, 1998)

Sri L.V.V. Satyanarayana, Tester Gr-I/LT Meters/Undi is hereby informed that the memo cited 1st in the reference is itself is an executive order issued by the then Divisional Engineer/M&P/Eluru.

Hence, he is informed that the action taken by this office in accordance with the Rules and is in order. The revised pay fixation for the Pay scales of 2002 and 2006 which were sent along with reference 4th cited was already , acknowledged by him on 17.10.08.

Further he is informed that excess paid amount will be intimated separately and same will be recovered from his pay and allowances without any further notice.

It is explicit from the above referred memo that revised pay fixation particulars have been furnished to the petitioner and he acknowledged the same on 06.12.2008. Such is the situation, it can be said that the respondents revised the pay scale of the petitioner in the cadre of Instrument Mechanic (Grade-II) after putting" him on notice and furnishing the necessary particulars. Therefore, the proceedings issued by the respondents are in accordance with the B.P.M.S. No. 255, dated 05.01.1999.

9. Accordingly, the writ petition is devoid of merits and the same is hereby dismissed at the admission stage. No costs. This order does not preclude the petitioner to make a representation to the respondents for waiver of excess payments made to him and in which case, the respondents have to consider the same and take appropriate decision keeping in view the fact that he was not responsible for wrong fixation of his pay in the cadre of Instrument (Grade II) in the year 1999 and the excess payment has been sought to be recovered after seven years and that too at the fag end of his service.