

(2028) 12 MAD CK 0002

Madras HC

Case No: Writ Appeal No. 2807 Of 2022, Civil Miscellaneous Petition No. 22880 Of 2025

E.Anbu

APPELLANT

Vs

Chairman Cum Managing
Director And Others

RESPONDENT

Date of Decision: Dec. 16, 2028

Acts Referred:

- Constitution Of India, 1950-Article 226
- Industrial Disputes Act, 1947-Section 12(3)

Hon'ble Judges: M.S. Ramesh, J; R.Sakthivel, J

Bench: Division Bench

Advocate: P.Chandrasekaran, D.David Sundar Singh

Final Decision: Allowed/ Disposed Of

Judgement

M.S.Ramesh, J

1. This Writ Appeal has been filed to set aside the order passed in W.P.No.8833 of 2014 dated 10.06.2022.

2. The facts before the Writ Court are as follows. The appellant was initially absorbed as a Regular Assessor (Trainee) under Regulation 92 of the TNEB Service Regulations. After completion of six months of training period, he was absorbed as a Regular Assessor in the time scale of pay of Rs.3,370 - 100 - 6,370 with effect from 24.04.2009. The time scale of pay and the grade pay was subsequently revised to Rs.5,400 - 20,200 + 2,200 (G.P). On 12.02.2014, the grade pay in his time scale was revised and reduced to Rs.5,400 - 20,200 + 1,900 (G.P), without any prior notice of opportunity to the appellant herein.

3. When he had challenged this order dated 12.02.2014 before the Writ Court in W.P.No.8833 of 2014, his claim came to be rejected on 10.06.2022, predominantly on the ground that his conditions of service were governed under the terms of the

settlement under Section 12(3) of the Industrial Disputes Act, 1947, and since he is deemed to be a workman, he was required to redress his grievance before the Labour Court only. The other reason assigned in the order of the Writ Court was that the Writ Petitioner therein was appointed on compassionate grounds in the post of Assessor Grade II and since the initial appointment is on compassionate grounds, he cannot claim for a higher post. The said order of the Writ Court is put under challenge in this Writ Appeal.

4. The learned counsel for the appellant submitted that the revised order, which was impugned in the Writ Petition, was without any notice to the appellant and therefore, is in violation of principles of natural justice, which aspect was not considered by the Writ Court. Furthermore, degrading the appellants post from Regular Assessor to Assessor Grade II and consequentially, reducing his grade pay from Rs.2,200/- to Rs.1,900/-, without calling for any explanation of the proposed reduction, is unjustifiable and illegal.

5. Before the Writ Court, the respondents herein had not filed their counter affidavit.

6. The main ground on which the Writ Petition was rejected is that the conditions of service of the appellant herein is governed under 12(3) settlement and therefore, he had to redress his grievance only before the concerned Labour Court. We do not endorse these views in the order impugned before us.

7. The Constitutional Courts have been consistently holding that even when an alternate remedy to redress the grievances of an employee is available, a Writ Petition under Article 226 of the Constitution of India can be maintained, even without availing the alternate remedy, under certain limited expectations. One such expectations is when there is violation of principles of natural justice, as held in the case of Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others, reported in [(1998) 8 SCC 1]. While dealing with the scope of entertaining a Writ Petition under Article 226 of the Constitution of India, the Honble Supreme Court, after referring to the judgments rendered by the Constitution Bench, had held that the alternate remedy shall not operate as a bar, in at least three contingencies namely:

(i) Where the Writ Petition has been filed for the enforcement of any fundamental right; or

(ii) Where there has been a violation of the principles of natural justice; or

(iii) Where the proceedings are wholly without jurisdiction.

8. In the instant case, admittedly, the appellant herein was originally appointed as an Assessor Grade II and on completion of the training, he was absorbed as a Regular Assessor in the time scale of pay. After continuing several years as a Regular Assessor, his post was downgraded to Assessor Grade II and his Grade Pay was also reduced, without any due opportunity to the appellant to give his explanation for

such a proposed reduction.

9. In the absence of any show cause notice, the order impugned in the Writ Petition itself would be in violation of principles of natural justice and therefore, the appellant would be justified in challenging the same by invoking Article 226 of the Constitution of India before the Writ Court.

Thus, the main reason adopted by the Writ Court, in rejecting the Writ Petition, by granting him liberty to approach the Labour Court, may warrant interference.

10. The other reason assigned in the Writ Petition for rejecting the appellants claim is that since his appointment was on compassionate grounds, he cannot seek for a higher post. For recording such reason, the Writ Court has not relied upon any Regulation or a precedent. In matters of compassionate appointment, there may be Regulations to govern the initial entry of an employee. After the services of such an employee is regularised, he is required to be considered like any other Government employee for other purposes of service benefits.

11. In the instant case, no reason has been assigned in the revision order, downgrading the appellant from his post and for reducing his grade pay. The respondents herein did not even file their counter affidavit before the Writ Court to substantiate their action. Thus, in the absence of any Regulation, which would enable the respondents to deny the claim of the appellant on the ground that he was appointed on compassionate grounds, we are of the view that even this reason assigned by the Writ Court is legally unsustainable.

12. In the result, the order impugned in the Writ Petition, being violative of the principles of natural justice, cannot be legally sustained. Accordingly, the order passed in W.P.No.8833 of 2014, dated 10.06.2022 is set aside. So also, the order impugned in the Writ Petition in Memo No.000610/2927 ADM.I/A.3/F Assr/2014, dated 12.02.2014 is quashed. In case any recovery has been made pursuant to the impugned order in the Writ Petition, the same shall be forthwith refunded to the appellant herein, at least within a period of four (4) weeks from the date of receipt of a copy of this order.

13. Accordingly, the Writ Appeal stands allowed. No Costs. Consequently, connected miscellaneous petition is closed.