IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/01/2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.MURUGESAN

W.A.No.1081 of 2004
and
W.A.M.P.No.1958 of 2004

1. The Tamil Nadu Electricity Board,
rep. by its Secretary,
793, Anna Salai,
Chennai 600 002.

2. The Chairman,
Tamil Nadu Electricity Board,
793, Anna Salai,
Chennai 600 002. ..Appellants.

-Vs-

Tamil Nadu Electricity Board Engineers
Association, Electricity Avenue,
Rep. by its General Secretary Mr.G.Balakrishnan,
793, Anna Salai, Chennai 600 002. ..Respondent

PRAYER: Appeal against the order of the learned single Judge
dated 08.10.2003, passed in W.P.No.572 of 2002,
as stated therein.

!For Appellants :: Mr.V.Radhakrishnan

^For Respondent :: Mr.A.E.Chelliah, Senior Counsel
For Mr.P.Karunakaran

:J U D G M E N T

THE HONBLE THE CHIEF JUSTICE

This writ appeal has been filed against the order of the learned single Judge dated 08.10.2003.

2. Heard learned counsel for the parties and perused the records.

3. The writ petition was filed by an Association of Graduate Engineers in the Tamil Nadu Electricity Board. The dispute is between the Graduate Engineers on the one hand, and the diploma holders, who were appointed as Technical Assistants and Junior Engineers Gr.II, and who can subsequently be promoted as Assistant Engineers if they acquire B.E. Degree or A.M.I.E. through part time course or correspondence studies by internal selection, on the other. It is alleged in paragraph 2 of the affidavit filed in support of the writ petition that the directly recruited Assistant Engineers are seniors, and they were all along drawing a higher pay than the internally selected Assistant Engineers, who are their juniors, in every wage revision. However, now some of the internally selected juniors are getting more pay than the directly recruited Assistant Engineers, who are seniors, and this has happened on account of the wage revision w.e.f. 1.12.1996 providing grant of additional increments on the basis of the number of years service put in the department under Clause 6(4) of the Board's Proceedings in (Permanent) B.P.(FB) No.59 (Secretariat Branch) dated 18.07.19 98. It is alleged that many such directly recruited Assistant Engineers, who are seniors both in the cadre of Assistant Engineers as well as Assistant Executive Engineers are now being given lesser pay than their juniors who were subordinate to them earlier. It is further alleged that the representations of the petitioners have been rejected, and hence the writ petition.

4. In paragraph 4 of the petitioner's affidavit several details are given alleging that seniors are now being given less salary than juniors. It is alleged that this violates Article 14 of the Constitution of India.

5. A counter affidavit was filed in the writ petition by the respondents. In Paragraph 3 of the same it is alleged that the internal selection is resorted to not only for the post of Assistant Engineers category but also categories such as Junior Assistant, Typist, Steno Typist, Assessor and Technical Assistant, etc. In all these cases the period of service rendered in previous posts is counted for pension in the new post, and the pay drawn in the previous post is protected in the new post. Such internally selected persons by virtue of their earlier service in the Board draw more pay than the directly recruited employees, as their pay has been protected. It is alleged that this is not an anomaly in any real sense. It is further alleged that the pay protection is the benefit consciously allowed by the Board to its workmen, who were recruited from other posts through internal selection, and this is governed by the orders issued in (Per) B.P. (F.B.) No.95, (Secretariat Branch) dated 02.11.1985 covering all the employees of the Board.

6. In Paragraph 5 of the counter affidavit it is averred that when workmen were recruited to another post internally, there were occasions, at the time of their appointment, when such internally selected and appointed persons were drawing higher pay in the previous post itself than the minimum scale of pay applicable for the post to which that person was appointed through such internal selection, and in all such cases their pay in the previous post was protected in the new post. The position in the Government of India and in the Government of Tamil Nadu service is similar.

7. In paragraph 6 of the counter affidavit it is alleged that in the 1996 Wage Revision Orders, it was ordered that a benefit of one increment for the first 7 years of regular completed service, and thereafter, one increment for every 10 years of service, as service weightage shall be given after fitment in the new scale of pay. By virtue of this provision the employees with longer years of service get more number of increments as service weightage benefit than those with less number of years of service.

8. In paragraph 7 of the counter affidavit Clauses 6(3) and 6(4) of the Board's Proceedings in (Permanent) B.P.(FB) No.59 (Secretariat Branch) dated 18.07.1998 were extracted, and the same are as follows:-
Clause 6(3) : Where a junior opts to come over to the revised scale from a date subsequent to 1st December 1996 and happens to get more pay than that of his senior by way of fitment benefit, then the pay of the senior shall be stepped up to the level of the pay of the junior with effect from the date from which the junior draws such higher pay.
The above provision will not apply to those covered, under para 5(ii) above.
The applicability of the above provision is subject to the condition that:
(i)the senior was drawing pay higher than or equal to the pay of the junior in the pre-revised scales of pay from time to time.
(ii)if the pay and the date of increment of a senior and junior are identical in the pre-revised scale of pay and if the senior opts for revised scale with effect from 01.12.1996 whereas the junior foregoes the wage revision benefit and opts for revised scale with effect from the date of next increment or subsequent increments after 1.12.1996 and consequently the junior happens to get higher pay than the senior, such anomaly should not be rectified since the senior also could have opted for the same date as the junior and availed the fitment benefit, as that of his junior. However, the anomaly may be set right, by permitting the senior to opt for revised scale from the same date of next increment or subsequent increment after 1.12.1996 as opted by the junior subject to the condition, that, the wage revision arrear already drawn by the senior with effect from 1.12.1996 is refunded in one lumpsum.

Clause 6(4): "Senior" and "Junior" mentioned in this regulation shall be only those covered by sanction of same number of service weightage increments."

9. The petitioner-Association requested the respondents to annul clause 6(4) quoted above, but this was not accepted by the respondents because the above rule is the same for both workmen and officers.

10. In paragraph 9 of the counter affidavit it is stated that there were instances where on appointment itself, an internally recruited Assistant Engineer may be getting higher pay than the directly recruited senior Assistant Engineer, as in the case of one Thiru S. Mohankumar, Assistant Executive Engineer, details of which are given in paragraph 10 of the counter affidavit. On the date of his appointment as Assistant Engineer his pay in the previous post was protected by grant of personal pay. Hence, it is

alleged that this was the existing practice even earlier, and was not on account of wage revision w.e.f.01.12.1996 as alleged by the petitioner-Association.

11. In paragraph □ 12 of the counter affidavit it is alleged that the anomaly of junior drawing more pay already existed in the case of an Assistant Engineer/Non-Degree Holder promoted as Assistant Executive Engineer, who was promoted step by step (hierarchical promotion), and would be drawing higher pay than the senior Degree Holders/Direct Recruitees with lesser number of years of service. Hence, it is alleged that there is no anomaly. It is alleged that □Seniority□ of an employee is a mere relation to the category to which he belongs, whereas the □Service Weightage□ allowed in the wage revision of 1996 is taking into account the total service of an employee in all categories put together from the date of his joining the Board.

12. In paragraph 14 of the counter it is alleged that the representations of the petitioner-Association were examined in detail, but were rejected by the Board. Therefore, the grievance alleged by the petitioner Association that its representations were not considered is not correct.

13. The learned single Judge by his order dated 08.10.2003 allowed the writ petition holding that □the principle that a senior must not get less pay than his junior must be followed□. In our opinion, there is no such absolute principle that a senior can never get less pay than his junior. It can happen that a junior may get higher pay than his senior, as he may put in more number of years of service than his senior. In our opinion there is no anomaly or illegality in this. There is also no violation of Article 14 of the Constitution of India. Hence, in our considered opinion, the order of the learned single Judge is not correct and deserves to be set aside.

14. We are of the considered view that the impugned Clause 6(4) of the Board□s Proceedings in (Permanent) B.P.(FB) No.59 (Secretariat Branch) dated 18.07.1998 is not illegal or unconstitutional. It may be mentioned that there is always a presumption in favour of the constitutional validity of a statute or rule, and an attempt should be made to uphold the same instead of readily striking it down.

15. In B.R.Enterprises Vs. State of U.P. and Others, (1999) 9 SCC 700 (vide paragraph 81) the Supreme Court observed:-
□It is also well settled that first attempt should be made by the Courts to uphold the charged provision and not to invalidate it merely because one of the possible interpretations leads to such a result, howsoever attractive it may be. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted.□

16. It may be mentioned that fixing of pay scales and salaries is a complicated matter and it is for the executive authority to decide, as they

only have the expertise in this matter. Ordinarily, it is not proper for the Courts to interfere in these types of matters, as Courts do not have such enterprise.

17. In Union of India Vs. P.V.Hariharan, J.T. 1997 (3) 569 the Supreme Court observed that the Tribunals are often interfering with pay scales without proper reason and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendation of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below will put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission goes into the problem at great depth and it is the proper authority to decide upon the issue. Very often the doctrine of equal pay for equal work is also being misunderstood and misapplied freely revising and enhancing the pay scales across the board.

18. In our opinion, fixation of pay scales, salaries, etc., are purely executive functions and it is not proper for this Court to interfere in this executive domain. In Rama. Muthuramalingam Vs. The Deputy Superintendent of Police, Mannargudi & Others, 2004(5) CTC 554 a Division Bench of this Court discussed the philosophy of judicial restraint in great detail and we reiterate the views expressed therein. There are several considerations which have to be taken into account by the executive while fixing the pay scales, salaries, etc., and the Courts should realise that only the executive authorities have the requisite expertise in such matters, and not the Courts. Interference by the Courts in the fixation of pay scales, salaries, etc., can only result in chaos and confusion, and can have adverse and undesirable repercussions.

19. There is nothing in the constitution or in any statutory rule that a junior cannot get a higher salary than a senior, particularly, when the junior has put in a large number of years of service, as compared to the senior, who may be a new recruit. In any event, these are matters to be decided by the executive, and it is not proper for this Court to encroach upon in this field, as has been done by the learned single Judge. The Courts must exercise judicial restraint and not interfere in such matters. The three organs of the State - the Legislature, the Executive, and the Judiciary have their own broad spheres of operation, and it is ordinarily not proper for one organ to encroach into the domain of another.

20. It is well settled that in policy matters this Court has a very limited scope of interference vide Union of India vs. International Trading Co., J.T. 2003 (4) SC 549 (para 17), State of Punjab vs. Ram Lubhaya, 1998 (4) SCC 117, Krishnan Kakkanth vs. Government of Kerala 1 997 (9) SCC 495, G.B. Mahajan vs. Jalgaon Municipal Council AIR 1991 SC 1153, Federation of Railway Officers Association vs. Union of India, 2003 (4) SCC 289.

21. In Union of India vs. International Trading Co. 2003 (51) ALR 598 (vide paragraph 17) the Supreme Court observed:

The Courts as observed in G.P. Mahajan v. Jalgaon Municipal Council, AIR

1994 SC 988 are kept out of the lush field of administration policy except where the policy is inconsistent with the express or implied provision of a statute which creates the power to which the policy relates, or where a decision made in purported exercise of power is such that a repository of the power acting reasonably and in good faith could not have made it. But there has to be a word of caution. Something overwhelming must appear before the Court will intervene. That is and ought to be a difficult onus for an applicant to discharge. The Courts are not very good at formulating or evaluating policy. Sometimes when the Courts have intervened on policy grounds the Court' s view of the range of policies open under the statute or of what is unreasonable policy has not got public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism. As Professor Wade points out (in Administrative Law by H.W.R. Wade, 6 th Edition), there is ample room within the legal boundaries for radical differences of opinion in which neither side is unreasonable. The reasonableness in administrative law must therefore distinguish between proper course and improper abuse of power. Nor is the test the Court's own standard of reasonableness as it might conceive it in a given situation. The point to note is that the thing is not unreasonable in the legal sense merely because the Court thinks it to be unwise.

22. In Tamil Nadu Education Dept., Ministerial and General Subordinate Services Association vs. State of Tamil Nadu and others, AIR 1980 SC 379, the Supreme Court while examining the scope of interference by the Courts in public policy held that the Court cannot strike down a circular / Government Order or a policy merely because there is a variation or contradiction. The Court observed: Life is sometimes contradiction and even inconsistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factors fouls.
In that decision the Court also observed:
 Once, the principle is found to be rational, the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate the order or the policy. Every cause claims a martyr and however, unhappy we be to see the seniors of yesterdays becoming the juniors of today, this is an area where, absent arbitrariness and irrationality, the Court has to adopt a hands-off policy.

23. In Maharashtra State Board of Secondary and High Secondary Education and others vs. Paritosh Bhupesh Kumarsheth, AIR 1984 SC 1543, the Supreme Court considered the scope of judicial review in a case of policy decision and held as under:-
The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the sub-ordinate regulation making body. It may be a wise policy, which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy but is even a foolish one, and that it will not really serve to effectuate the purpose of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and

there is no scope for any interference by the Courts unless the particular provision impugned before it can be said to suffer from any legal infirmity in the sense of its being wholly beyond the scope of the regulation-making power or it being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.

24. A similar view has been reiterated in Delhi Science Forum and others vs. Union of India and another, AIR 1996 SC 1356 ; U.P. Kattha Factories Association vs. State of U.P. and others, (1996) 2 SCC 97; and Rameshwar Prasad vs. Managing Director, U.P. Rajkiya Nirman Nigam Limited and others (1999) 8 SCC 381.

25. In Netai Bag and others vs. State of West Bengal and others, (200 0) 8 SCC 262 (vide para20), the Supreme Court observed:
The Court cannot strike down a policy decision taken by the government merely because it feels that another decision would have been fairer or wiser or more scientific or logical.

The Government is entitled to make pragmatic adjustments and policy decision which may be necessary or called for under the prevalent peculiar circumstances. While deciding the said case, the Court referred to and relied upon its earlier judgments in State of Madhya Pradesh vs. Nandlal Jaiswal, AIR 1987 SC 251 and Sachidanand Pandey vs. State of West Bengal, AIR 1987 SC 1109, wherein the Court held that judicial interference with policy decision is permissible only if the decision is shown to be patently arbitrary, discriminatory or mala fide. A similar view has been reiterated in Union of India and others vs. Dinesh Engineering Corporation and another, (2001) 8 SCC 491.

26. In Ugar Sugar Works Ltd. vs. Delhi Administration and others, (20 01) 3 SCC 635, it has been held that in exercise of their powers of judicial review, the Courts do not ordinarily interfere with policy decisions of the executive unless the policy can be faulted on the ground of mala fide, unreasonableness, arbitrariness or unfairness etc. If the policy cannot be touched on any of these grounds, the mere fact that it may affect the interests of a party does not justify invalidating the policy.

27. In State of Himachal Pradesh and another vs. Padam Dev and others (2002) 4 SCC 510, the Supreme Court held that unless a policy decision is demonstrably capricious or arbitrary and not informed by any reason or discriminatory or infringing any statute or the Constitution it cannot be a subject of judicial interference under the provisions of Articles 32, 226 and 136 of the Constitution. Similar view, has been reiterated in State of Rajasthan and others vs. Lata Arun, (2002) 6 SCC 252.

28. This Court cannot ordinarily interfere in administrative matters, since the administrative authorities are specialists in matters relating to the administration. The court does not have the expertise in such matters, and ordinarily should leave such matters to the discretion of the administrative authorities. It is only in rare and exceptional cases, where the Wednesbury principle applies, that the Court should interfere, vide Tata Cellular vs. Union of India, (1994) 6 SCC 6 51, Om Kumar vs. Union of India, 2001 (2) SCC 386. In U.P., Financial Corporation V. M/s Naini Oxygen &

Acetylence Gas Ltd. J.T. 1994 (7) S.C.551 (vide para 21) the Supreme Court observed:
 However, we cannot lose sight of the fact that the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its function it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the Courts or a third party to substitute its decision, however more prudent, commercial or business like it may be , for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed by making the Corporation liable.

29. In Haryana Financial Corporation and another v. M/s Jagdamba Oil Mills and another (2002) 1 UPLBEC 937 (vide paragraph 10) the Supreme Court observed:
If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known that more than one choice is available to the administrative authorities. They have a certain amount of discretion available to them. They have a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred. (per Lord Diplock in Secretary of State for Education and Science V. Metropolitan Borough Counsel of Tameside, 1977 AC 1014). The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, the Court can intervene. To quote the classic passage from the judgment of Lord Greene M.R. in Associated Provincial Picture Houses Ltd. V. Wednesbury Corporation, 1947 (2) ALL ER 680:
It is true the discretion must be exercised reasonably. Now what does that mean? Lawyer familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word ' unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules,he may truly be said, and often is said, to be acting 'unreasonably.' Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.

30. In Tata Cellular vs Union of India AIR 1996 SC 11 (vide paragraph 113) the Supreme Court observed:
(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a court of appeal over administrative decisions but merely reviews the manner in which the decision was made.
(3) The court does not have the expertise to correct an administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible.

31. As Lord Denning observed:
This power to overturn executive decisions must be exercised very carefully, because you have got to remember that the executive and the local authorities have their very own responsibilities and they have the right to make decisions. The courts should be very wary about interfering and only interfere in extreme cases, that is, cases where the Court is sure they have gone wrong in law or they have been utterly unreasonable. Otherwise you would get a conflict between the courts and the government and the authorities, which would be most undesirable. The courts must act very warily in this matter. (See 'Judging the World' by Garry Sturgess Philip Chubb).

32. In our opinion judges must maintain judicial self restraint while exercising the powers of judicial review of administrative or legislative decisions.
In view of the complexities of modern society, wrote Justice Frankfurter, while Professor of Law at Harvard University, and the restricted scope of any man's experience, tolerance and humility in passing judgment on the worth of the experience and beliefs of others become crucial faculties in the disposition of cases. The successful exercise of such judicial power calls for rare intellectual disinterestedness and penetration, lest limitation in personal experience and imagination operate as limitations of the Constitution. These insights Mr. Justice Holmes applied in hundreds of cases and expressed in memorable language:
It is a misfortune if a judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong.

33. In writing a biographical essay on the celebrated Justice Holmes of the U.S. Supreme Court in the dictionary of American Biography, Justice Frankfurter wrote:
It was not for him (Holmes) to prescribe for society or to deny it the right of experimentation within very wide limits. That was to be left for contest by the political forces in the state. The duty of the Court was to keep the ring free. He reached the democratic result by the philosophic route of scepticism - by his disbelief in ultimate answers to social questions. Thereby he exhibited the judicial function at its purest.
(See 'Essays on Legal History in Honour of Felix Frankfurter' Edited by Morris D. Forkosch).

34. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the judges preferences. The Court must not embarrass the administrative authorities and must realise that administrative authorities have expertise in the field of administration while the Court does not. In the word of Chief Justice Neely:

 I have very few illusions about my own limitations as a Judge. I am not an accountant, electrical engineer, financer, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator.

35. In administrative matters the Court should therefore ordinarily defer to the judgment of the administrators unless the decision is clearly illegal or shockingly arbitrary. In this connection Justice Frankfurter while Professor of Law at Harvard University wrote in 'The Public and its Government' --
 With the great men of the Supreme Court constitutional adjudication has always been statecraft. As a mere Judge, Marshall had his superiors among his colleagues. His supremacy lay in his recognition of the practical needs of government. The great judges are those to whom the Constitution is not primarily a text for interpretation but the means of ordering the life of a progressive people.
In the same book Justice Frankfurter also wrote---
 In simple truth, the difficulties that government encounters from law do not inhere in the Constitution. They are due to the judges who interpret it. That document has ample resources for imaginative statesmanship, if judges have imagination for statesmanship.

36. In Keshvanand Bharathi v. State of Kerala, AIR 1973 SC 1461 (vide para 1547) Khanna, J. observed:
In exercising the power of judicial review, the Courts cannot be oblivious of the practical needs of the government. The door has to be left open for trial and error.

37. In Indian Railway Construction Co. Limited vs. Ajay Kumar (2003) 2 UPLBEC 1206 (vide para 14) the Supreme Court observed that there are three grounds on which administration action is subject to control by judicial review. The first ground is illegality, the second is irrationality and the third is procedural impropriety. These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service 1984 (3) All ER 935. The Supreme Court observed that the Court will be slow to interfere in such matters relating to administrative functions unless the decision is tainted by any vulnerability enumerated above, like illegality, irrationality and procedural impropriety. The famous case, commonly known as the 'Wednesbury's case', is treated as the landmark in laying down various principles relating to judicial review of administrative or statutory discretion.

38. Lord Diplock explained irrationality as follows:

By irrationality I mean what can be now be succinctly referred to as Wednesbury unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have

arrived at it.

39. From the above stand point the impugned Clause 6(4) of the (Permanent) B.P.(FB) No.59 (Secretariat Branch) dated 18.07.1998 cannot, in our opinion, be faulted, as it cannot be said to be so outrageous in defiance of logic or accepted moral standards that no sensible person could have arrived at it. There is a rational basis for the impugned rule viz., that there should be some pay protection to the employees who have put in long years of service. No doubt a different principle could have been adopted, but on this ground the impugned clause cannot be said to be vitiated. The legislature and the executive in their wisdom have different choices, and this Court cannot say that this or that choice should have been adopted. As Mr.Justice Cardozo of the U.S. Supreme Court observed in Anderson Vs. Wilson, 289 U.S. 20:-
We do not pause to consider whether a statute differently conceived and framed would yield results more consonant with fairness and reason. We take this statute as we find it.

40. In our opinion the same principle will apply to administrative decisions also.

41. It must never be forgotten that the administrative authorities have wide experience in administrative matters. No Court should therefore strike down an administrative decision solely because it is perceived by it to be unwise. A Judge cannot act on the belief that he knows better than the executive on a question of policy, because he can never be justifiably certain that he is right. Judicial humility should therefore prevail over judicial activism in this respect.

42. In our considered opinion Clause 6(4) of the Board's Proceedings in (Permanent) B.P.(FB) No.59 (Secretariat Branch) dated 18.07.1998 incorporates a policy decision and it is well settled that this Court should not interfere in policy matters unless, it is clearly unconstitutional or shockingly arbitrary in the Wednesbury sense vide JT 2003 (4) SC 549 (paragraph - 17): AIR 1991 SC 1153: (1997) 9 SCC 495: (20 03) 7 SCC 301: 2003 AIR SCW 2828 (paragraph-18).

43. In Krishnan Kakkanth Vs. Government of Kerala, (1997) 9 SCC 495 the Supreme Court observed:-
To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial whether a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstratably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing the public policy in the context of illegality and unconstitutionality, courts should avoid

embarking on uncharted ocean of public policy.

44. In our considered view, the policy behind Clause 6(4) of the Board's Proceedings in (Permanent) B.P.(FB) No.59 (Secretariat Branch) dated 18.07.1998 is obviously that employees having long years of service should get some pay protection, and hence they can sometime even get higher pay than some senior employees who are newly recruited. There is nothing shockingly arbitrary about this.

45. We are of the opinion that Court should not readily strike down rules or policy decisions on the ground that they are unconstitutional, rather every attempt should be made to uphold the constitutional validity. The Courts should always hesitate to declare a statute or policy decision unconstitutional, unless it finds it clearly so, because invalidating a statute or policy decision is a grave step. Of the three organs of the State, only the judiciary has the power to declare the Constitutional limits of all three. This great power should therefore be used by the judiciary with the utmost humility and selfrestraint.

46. As observed by the Supreme Court in M.H.Qureshi Vs. State of Bihar, AIR 1958 SC 731, the Court must presume that the legislature understands and correctly appreciates the needs of its own people. The legislature is free to recognize degrees of harm and may confine its restrictions to those where the need is deemed to be the clearest. In the same decision it was also observed that the legislature is the best judge of what is good for the community on whose suffrage it came into existence. In our opinion, the same principle also applies to the executive decisions, as the executive is accountable to the legislature in a democracy.

47. One of the earliest scholarly treatments of the scope of judicial review is Prof. James Bradley Thayer's article "The Origin and Scope of the American Doctrine of Constitutional Law", published in 1893 in the Harvard Law Review. This paper is a singularly important piece of American legal scholarship, if for no other reason than that Justices Homes and Brandeis of the U.S.Supreme Court, among modern judges, carried its influence with them to the Bench, as also did Mr. Justice Frankfurter. Thayer, who was a Professor of Law at Harvard University, strongly urged that the courts must be astute not to trench upon the proper powers of the other departments of government, nor to confine their discretion. Full and free play must be allowed to "that wide margin of considerations which address themselves only to the practical judgment of a legislative body or the executive authorities". Moreover, every action of the other departments embodies an implicit decision on their part that it was within their constitutional power to act as they did. The judiciary must accord the utmost respect to this determination, even though it be a tacit one. This meant for Thayer, and he attempted to prove that it had generally meant to the courts, that a statute or a policy decision could be struck down as unconstitutional only "when those who have the right to make it have not merely made a mistake, but have made a very clear one, so clear that it is not open to rational question". After all, the Constitution is not a legal document of the nature of a title deed or the like, to be read closely and construed with technical finality, but a complex charter of government,

looking to unforeseeable future exigencies. Most frequently, reasonable men will differ about its proper construction. The Constitution leaves open a range of choice and judgment, and hence constitutional construction involves hospitality to large purposes, not merely textual exegesis.

48. In Lochner Vs. New York, 198 U.S. 45 (1905), Mr.Justice Holmes, the celebrated Judge of the U.S. Supreme Court in his classic dissenting judgment pleaded for judicial tolerance of state legislative action even when the Court may disapprove of the State Policy. Similarly, in his dissenting judgment in Griswold Vs. Connecticut, 381 U.S. 4 79, Mr.Justice Hugo Black of the U.S. Supreme Court warned that unbounded judicial creativity would make this Court a day-to-day Constitutional Convention. Justice Frankfurter has pointed out that great judges have constantly admonished their brethren of the need for discipline in observing their limitations (see Frankfurters Some Reflections on the Reading of Statutes).

49. For the reasons give above, this writ appeal is allowed and the impugned order of the learned single Judge dated 08.10.2003 passed in W.P.No.572 of 2002 is set aside. No costs. Consequently, connected W.A.M.P. is closed.

Index: Yes
Internet: Yes

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Copy to:-
1. The Tamil Nadu Electricity Board,
rep. by its Secretary,
793, Anna Salai,
Chennai 600 002.

2. The Chairman,
Tamil Nadu Electricity Board,
793, Anna Salai,
Chennai 600 002.