



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2016

CORAM:

WEB COPY

THE HONOURABLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

W.A.(MD).No.1078 of 2016
and
W.M.P.No.6512 of 2016
and
WP.(MD).No.4841/2009

- 1.The Chairman,
Tamil Nadu Electricity Board,
144, Electricity Avenue,
Anna Salai, Chennai.
- 2.The Chief Engineer/Distribution TNEB,
Trichy Region, Thennur, Tiruchirappalli.
- 3.The Superintending Engineer,
TNEB, Trichy Electricity Distribution Circle, [Metro] Trichy.

: Appellants/Respondents

Vs.

T.Gunasekaran

: Respondent/Writ Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the Order dated 06.02.2014 made in W.P.(MD).No.4841 of 2009 on the file of this Court.

Prayer in WP(MD). 4841/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3rd Respondent vide Memo No.113/PRS/A1/2007 dated 5.12.2007 quash the same and direct the Respondent to reimburse the amount already recovered under Memo No.113/PRS/A1/2007 dated 5.12.2007 passed by 3rd Respondent.

For Appellants

: Mrs.S.Srimathy

For Respondent

: Mr.R.Murali

For Mr.K.Govindarajan



JUDGMENT

[Judgment of the Court was made by The Hon'ble The Chief Justice]
The respondent is made to suffer through the impugned memo dated 05.12.2007 for no fault of his own; while the appellant seeks reimbursement of the amount said to have been paid in excess and that too, without any hearing to the respondent.

2. Since the impugned memo of recovery was assailed by the respondent by filing Writ Petition (MD).No.4841 of 2009, the least one would have expected was that the stand of the appellant would have been placed on record. The impugned order shows that there is no counter affidavit on record, even five years after when the Writ Petition was allowed by the impugned order dated 06.02.2014.

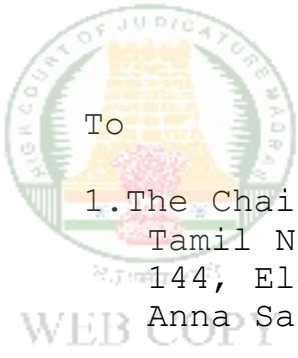
3. The recovery was sought to be made for the increments given to the respondent from the year 1999, after lapse of 10 years on the ground that he was ineligible for the same, having been not passed the Electricity Department Account Test. The respondent has since already retired from service in the year 2011.

4. We are of the view that the aforesaid facts are squarely covered by the situation envisaged in the Judgment of the Hon'ble **Supreme Court in Sahib Ram Vs. State of Haryana [1995 Supp 1 SCC 18 and Shyam Babu Verma Vs. Union of India, [1994 (1) LLJ 815 (SC)]**, which deal with the situation, where excess payment is not attributable to the misrepresentation or fraud on the part of the employee. In a subsequent Judgment in **State of Punjab Vs. Rafiq Masiq, [Civil Appeal No.11527 of 2014, dated 18.12.2014]**, being a batch of cases, the Supreme Court has found that the recovery of monetary benefits wrongly extended to employees can be interfered with, in cases where such recovery would result in hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover and in the context of the facts of the present case, it could be seen from the record that the present recovery is sought to be made of the amounts paid to him, without any misrepresentation on his part.

5. We are, thus, of the view that the impugned order does not call for any interference. The Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (T&P)

/True Copy/



To

1.The Chairman,
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2.The Chief Engineer/Distribution TNEB,
Trichy Region, Thennur, Tiruchirappalli.

3.The Superintending Engineer,
TNEB, Trichy Electricity Distribution Circle,
[Metro] Trichy.

+1cc to M/s.K.Govindarajan, Advocate SR.NO.58322

+1cc to M/s.S.M.S.Johnny Basha, Advocate SR.No.58151

NB

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JUDGMENT MADE IN
W.A. (MD) .No.1078 of 2016
03.10.2016