



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) No.11607 of 2011

and

M.P.(MD) No.1 of 2011

A.Xavier

... Petitioner

-vs-

1.The Chairman

Tamil Nadu Electricity Board
Nadipisai Pulavar K.R.R.Maligai
144, Anna Salai, Chennai-620 002

2.The Superintending Engineer

Tamil Nadu Electricity Board
Ramanathapuram Electricity
Distribution Circle
Ramanathapuram

3.The Executive Engineer / Distribution

Tamil Nadu Electricity Board
Paramakudi Region
Ramanathapuram District

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records in கு.எண்.சே.போ/லி/பரம/கமே/கோ-தனிகை/அ.எண்.1606/11, dated 02.06.2011, from the third respondent and quash the same illegal, unjust, unconstitutional without jurisdiction and to direct the respondents to repay the recovered amount without predetermined period and for consequential orders.

For Petitioner : Mr.J.M.Hassanul Bazari

For Respondents : Mr.S.Dhayalan
Standing Counsel for T.N.E.B.

O R D E R

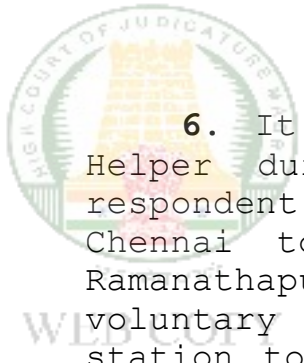
The writ petitioner has filed this writ petition against the recovery order, dated 02.06.2011, passed by the third respondent, without prior notice.



2. It is the case of the writ petitioner that on 23.11.1987, he was temporarily appointed as a Helper in the Tamil Nadu Electricity Board, Mylapore Division, and his appointment was regularized and thereafter, he was promoted as a Wireman on 13.11.1992. Thereafter, on 07.11.1995, he was transferred to Ramanathapuram District on his request. He had completed nine years of service as on 16.11.2001 and he was eligible for Selection Grade Pay and his salary was also increased. The second respondent, vide memo No.019380/Adm.IF.A1/Sel.Gr..2002, dated 30.01.2002, had granted the benefit to the petitioner and permitted him to draw the arrears of pay and other allowances with effect from 16.11.2001. Thereafter, he was promoted as a Line Inspector and his salary was refixed from Rs.3795-110-6435 to Rs.4200-130-7060 with usual allowances and thereafter, he was promoted as a Foreman 1st Grade and his salary was refixed from Rs.4200-130-7060 to Rs.5600-175-10150 and he was permitted to draw arrears of pay and other allowances with effect from 08.03.2009 and the next increment was fixed with effect from 01.01.2010.

3. While the matter stood thus, the petitioner had received the impugned proceedings in கு.எண்.சே.போ/லி/பரம/கமே/கோ-தனிக் கை/அ.எண்.1606/11, dated 02.06.2011, from the third respondent, directing recovery of excess salary and allowances to the tune of Rs.31,349/- and further it was stated that the excess amount would be recovered in ten monthly installments at the rate of Rs.3,150/-. According to the petitioner, the excess amount could have been recovered within one year and if it was not adjusted within that financial year, it could not be recovered thereafter. Therefore, he submitted a representation, on 15.06.2011, to the third respondent and the third respondent, vide his reply, dated 24.08.2011, rejected his representation stating that as per the audit objection, it was directed to recover the excess amount of Rs.31,345/- and accordingly, it would be recovered in ten monthly installments at the rate of Rs.3,150/- per month.

4. The respondents, in their counter affidavit, would contend that three installments have already been effected and the remaining installments have to be effected. Further, the employee, who had continuously served for more than nine years in one Circle, could be considered for Selection Grade Pay and insofar as the petitioner is concerned, he started serving in Ramanathapuram Electricity Distribution Circle only from 08.11.1995 and he had not completed nine years in Ramanathapuram Electricity Distribution Circle and therefore, he is not eligible for Selection Grade Pay and the same was objected in the audit and therefore, the excess amount was ordered to be recovered.



6. It is an admitted fact that the petitioner joined as a Helper during 1987 and continues under the control of the respondent Electricity Board till date. He was transferred from Chennai to Ramanathapuram on his own request and joined in Ramanathapuram Circle on 08.11.1995. As per the conditions of voluntary transfer, the employee, who was transferred from one station to another station on his own request, may be placed at the bottom of seniority list. But, it is incorrect to state that the service rendered by the employee in various stations can be taken away without notice, more particularly, when he is serving under the same Management. Furthermore, the petitioner is governed by the Rules and Regulations of the Tamil Nadu Electricity Board and hence, his contentions have to be answered only by the respondent Board.

7. Be that as it may, it is the admitted fact that before passing the impugned order of recovery, no notice was issued to the petitioner to show cause as to why recovery of excess amount cannot be made. This is a clear case of violation of principles of natural justice. Therefore, this Court has no hesitation to set aside the impugned order passed by the third respondent and to direct the respondents to proceed with the recovery proceedings in accordance with their rules and regulations, after giving due notice to the petitioner.

8. In the result, the writ petition is allowed and the impugned order, dated 02.06.2011, passed in கு.எண்.சே.போ/லிபரம/கமே/கோ-தனிக் கை/அ.எண்.1606/11, by the third respondent is set aside. The respondents are directed to initiate recovery proceedings afresh, in accordance with the rules and regulations of the Electricity Board, within a period of eight weeks from the date of receipt of a copy of this order, after affording reasonable opportunity to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CRL)

/True Copy/

Sub Assistant Registrar

krk

TO

1.The Chairman

Tamil Nadu Electricity Board

<https://hcservices.ecourts.gov.in/hcservices/>

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+1cc to Mr.J.M.Hassanul Bazari, Advocate Sr.No. 66465

JAM/21.11.16/ck/4p-5c

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