

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.11858 of 2004

S.Sivashankaran

... Petitioner

The Superintending Engineer,  
Generation Circle,  
Tamil Nadu Electricity Board,  
Kundah,  
Nilgiris District.

...Respondent

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the letter of the respondent in No.51/2003/N.P2/ENIV.2/Ko.1/12/96/- fixation of pay/2003-dated 10.12.2003, and a further consequential order in Ku.Aa.No.Sa.Pa.Pi.2/Uu .4/-Koppu.04/- dated 12.3.2004 and quash the same and consequently direct the respondent to repay the amount already deducted in pursuance of the order dated 12.3.2004.

For petitioner :Mr.P.Raja

For Respondent : Mr.R.Dilip Kumar

ORDER

Challenging the letter of the respondent in No.51/2003/N.P2/ENIV.2/Ko.1/12/96/- fixation of pay/2003-dated 10.12.2003, and a further consequential order in Ku.Aa.No.Sa.Pa.Pi.2/Uu .4/Koppu.04/- dated 12.3.2004, the present Writ Petition has been filed.

2. The case of the petitioner is that he joined in the Tamil Nadu Electricity Board as Anti Malaria Mazdoor on 2.3.1969. Subsequently, he was promoted step by step and he was holding the post of Tool Keeper Grade I from 2.3.1999. While so, a Settlement was arrived under Section 12(3) or 18(1) of the Industrial Disputes Act between the employer and the employees. Thereafter, the fixation of scale of pay and other allowances

were modified on 8.7.1998 and is effective from 1.12.1997. On the basis of the above settlement, the Respondent Board issued a Proceedings on 18.7.1998. Accordingly 3 increments were granted to the petitioner. Thereafter, by letter dated 10.12.2003, stating that the petitioner has not completed 27 years of service excluding his temporary services as on 1.12.1996, the respondent ordered to refix his pay and also a consequential order for recovery of the amount which was paid excess was issued on 12.03.2004 . Challenging the same, the present Writ Petition has been filed.

3. Heard both sides and I have also perused the materials available on record.

4. In similar circumstances, in the case reported in (2015) 4 Supreme Court Cases 334, the Hon'ble Supreme Court of India formulated guidelines and enumerated circumstances under which order of recovery can be interfered and the Supreme Court also summarised few situations, wherein recoveries by the employers, would be impermissible in law, such as, (i) Recovery from employees belonging to Class-III & IV Service (or Group 'C' & 'D' Service), (ii) Recovery from retired Employees, or Employees who are due to retire within one year of the order of recovery and (iii) Recovery from employees, when the excess payment has been made for a period of excess of five years, before the order of recovery is issued, (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though, he should have rightfully been required to work against an inferior post and (v) In any other case, where the Court arrives at the conclusion that recovery, if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover. Applying the above said principles laid down by the Hon'ble Supreme Court of India in the case on hand, this Court is of the view that the order dated 10.12.2003 and the consequential order dated 12.3.2004 of the respondent are liable to be set aside.

5. In the result, the Writ Petition is allowed and order dated 10.12.2003 and the consequential order dated 12.03.2004 of the respondent are set aside. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

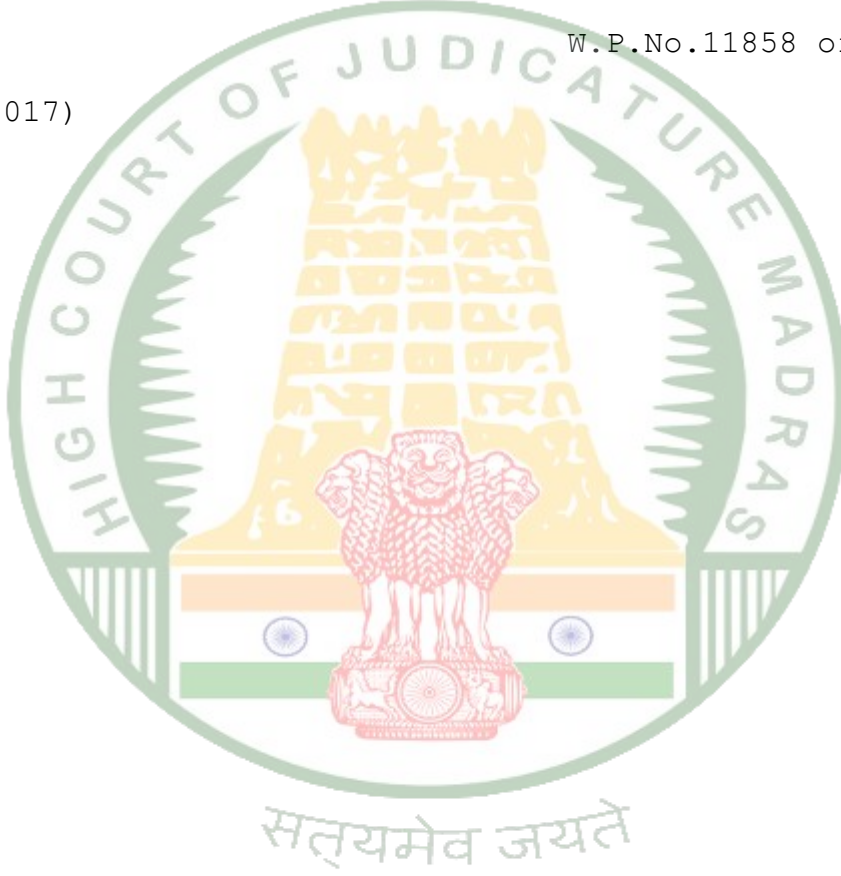
To

The Superintending Engineer,  
Generation Circle,  
Tamil Nadu Electricity Board,  
Kundah,  
Nilgiris District.

+lcc to Mr.P.Raja, Advocate, S.R.No.67103

W.P.No.11858 of 2004

PVS (CO)  
GN(12/10/2017)



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