

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-10-2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11935 of 2004

M.Hamsakutty

.. Petitioner

-VS-

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

... Respondent

Writ Petition is 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 Ku.No.Audit Notice No.54/2003/Ni.pi.2/E.ni.2/Ko.1/12/96 pay fixation /2003-1 dated 8.12.2003 and a further consequential order of the respondent 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.P.R.Dhilipkumar

ORDER

The order of recovery and revision of increment issued by the respondent in proceedings dated 8.12.2003 is under challenge in this writ petition.

2. The order impugned states that the increments admissible to the writ petitioner were wrongly calculated and the excess amount was paid to the writ petitioner. The reason stipulated is that instead of granting two annual increments, the respondent

has erroneously granted three annual increments, resulting in excess payment to the writ petitioner. Further, it is not stated in the impugned order that the error took place on account of any misrepresentation on the part of the writ petitioner.

3. The learned counsel appearing for the writ petitioner states that no notice or opportunity was provided to the writ petitioner before issuing the order of recovery.

4. This apart, the writ petitioner has not made any application in this regard and the entire calculation for increments were made by the Department itself and therefore, the error took place not at the instance of the writ petitioner and he cannot be penalised after his retirement. The writ petitioner has been retired from service and therefore, now the excess amount, cannot be recovered since it will affect his livelihood.

5. In this regard, the Honourable Supreme Court of India, in the case of State of Punjab and Others vs. Rafiq Masih (White Washer) and Others {2015 (4) SCC 334}, the relevant portion is extracted as under:-

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in 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.

(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."

6. The writ petitioner filed this writ petition while he was in service and the order of recovery was also issued when he was working in the respondent-Board. However, the writ petitioner has been retired from service during the pendency of the writ petition on 30.6.2004 itself. Now after a lapse of 13 years, the amount objected in the audit, cannot be recovered from the writ petitioner.

7. This apart, the respondent has not provided any opportunity to the writ petitioner to explain his case before issuing the impugned order and therefore, the impugned order was issued in violation of the principles of natural justice.

8. The excess amount was found during the course of audit objection and based on the said objection, the impugned order of recovery was issued. The objection was that the writ petitioner was eligible to draw only two increments as service weightage, contrarily, three increments were granted. There is no impediment in rectifying the error occurred on account of wrong fixation. However, the recovery of excess payment, cannot be resorted to in view of the fact that the writ petitioner has been retired from service in the year 2004 itself and the recovery, at this point of time, will affect his livelihood since the writ petitioner will be receiving a meagre amount of pension for leading his retired life.

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9. Thus, this Court is of the opinion that the legal principles settled by the Honourable Supreme Court of India, in the case cited supra, will be applicable to the facts and circumstances of the case on three grounds, namely, (1) no show cause notice or opportunity was given to the writ petitioner before issuing the impugned order; (2) there is no misrepresentation on the part of the writ petitioner in respect of grant of the excess increment; and (3) the writ petitioner is a retired employee and has retired from service in the year 2004 itself.

10. For all these reasons, this Court is inclined to consider the request of the writ petitioner regarding the order of recovery. In respect of correction of revision of pay, it is left open to the respondent to correct the errors, if any, occurred on account of the wrong fixation.

11. Accordingly, the impugned order passed by the respondent in proceedings Ku.No.Audit Notice No.54/2003/Ni.pi.2/E.ni.2/Ko.1/12/96 pay fixation /2003-1 dated 8.12.2003 dated 8.12.2003 is quashed. If any amount was already recovered by virtue of the impugned order, the same is directed to be disbursed to the writ petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.

12. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

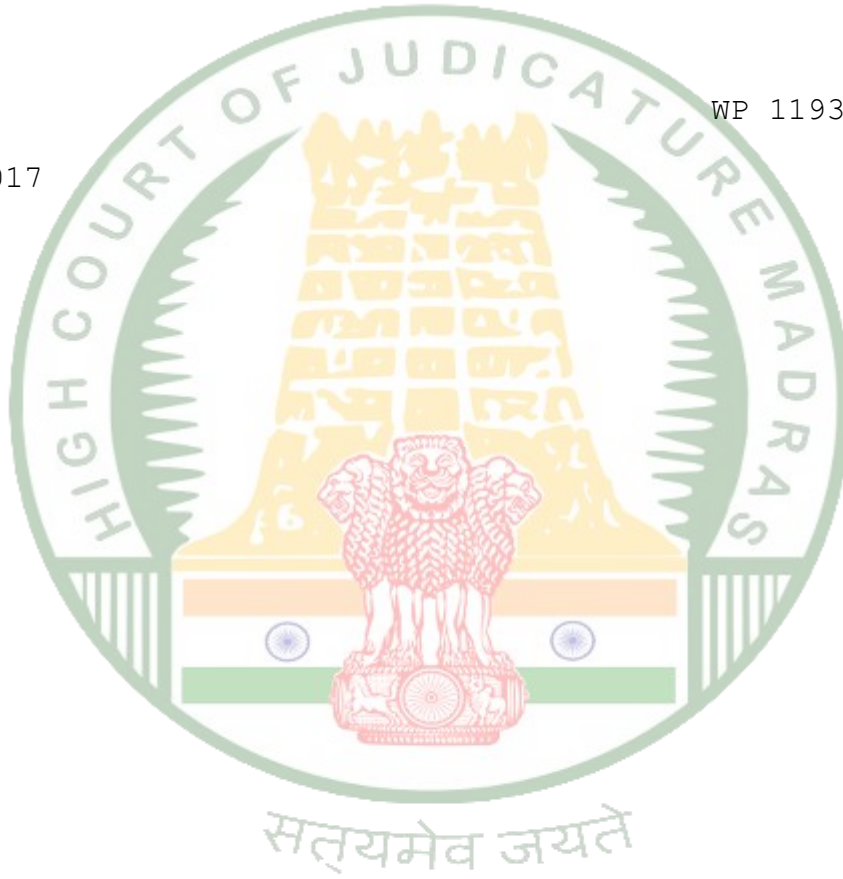
Svn

To

The Superintending Engineer,
Generation Circle,
Tamil Nadu Electricity Board,
Kundah,
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WP 11935 of 2004

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