

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.605 of 2015
and M.P.No.1 of 2015

- 1.The Chairman
Tamil Nadu Electricity Board
800, Anna Salai
Chennai 2.
 - 2.The Secretary
Tamil Nadu Electricity Board
800, Anna Salai
Chennai 2.
 - 3.The Superintending Engineer
General Construction Circle
K.Pudur, Madurai 7.
 - 4.The Deputy Chief Internal Audit Officer
Board Office Audit Branch
Madurai Regional Office
K.Pudur
Madurai 625 007.
- Vs
- ...Appellants/Respondents
- K.Pandi ...Respondent/Petitioner

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order passed in W.P.No.5490 of 2008 dated 28.03.2013.

W.P.No.5490 of 2008:

Petition filed under Article 226 of the constitution of India prayed that this Hon'ble Court may be pleased to issue a Writ of Certiorarified Mandamus or any other appropriate Writ order or direction in the nature of Writ of Certiorarified Mandamus Calling for the records relating to the impugned order of the 2nd respondent made in letter No.56158/A31/2007-1 dt 18.9.2007 and the consequential impugned order of recovery passed by the 3rd respondent in Memo.No.29603/603/SE/GCC/MDU/ADM/A2/F. Audit/07 dt 27.9.07 are illegal and quash the same and consequently direct the 2nd and 3rd respondents to refund the recovered amount of Rs.34 362/- to the petitioner with 24 percent interest from 30.10.2007.

For Appellants : Mr.P.R.Dilipkumar

For Respondent : Mr.G.Ananda Kumar

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The respondent was due to retire on attaining the age of superannuation on 30 September, 2007. The third appellant, on 27 September 2007, issued an order of recovery on the ground that the employee was paid in excess of his entitlement. The said order was quashed by the learned Single Judge in W.P.No.5490 of 2008. The order is under challenge at the instance of the appellants.

2. The issue raised in this appeal is covered by the judgment of the Hon'ble Supreme Court in State of Punjab and others, etc. vs. Rafiq Masih (White Washer), etc. [(2015) 4 SCC 334].

3. The Hon'ble Supreme Court, in paragraph 18 of the judgment, categorised the cases in which recovery is not possible. We extract the said paragraph for better appreciation.

"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."

4. The case of the respondent is covered by sub clauses (i) and (ii) of paragraph 18 of the above referred to judgment. We are, therefore, of the view that the learned Single Judge was correct in quashing the recovery.

In the result, the intra court appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

gms

To

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+1 CC to Mr.P.R. Dhilipkumar, Advocate sr 10585.
+1 Cc to Mr.G. Ananda Kumar, advocate sr 10365.

W.A.No.605 of 2015

SJ(CO)
SP(09/03/2018)



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