

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 30-10-2018

CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.28859 of 2013

K.Selvaraj

.. Petitioner

..Vs..

1.The Superintending Engineer,
Basin Bridge Gas Turbine Power Station,
Tamil Nadu Generation and Distribution
Corporation Limited,
Chennai-600 012.

2.The Internal Audit Officer,
Audit Branch,
Tamil Nadu Generation and Distribution
Corporation Limited,
144, Anna Salai,
Chennai-600 012.

.. Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, calling for the proceedings of the second respondent in Authorisation Letter No.28099 C.No.1258 AB Fo7.F 71/PPO No.85910 dated 16.4.2013 quash the same in so far as recovering a sum of Rs.64,309/- from the pension benefits of the petitioner and consequently direct the respondents to restore the scale of pay as Assistant in the scale of pay of Rs.6020-4200-130-7060 as on 1.4.1992 and refund the recovered amount of Rs.64,309/- to the petitioner.

For Petitioner : Mr.R.D.Ashok Kumar for
Mr.S.N.Ravichandran

For Respondents : Mr.P.R.Dhilipkumar

O R D E R

The order of recovery dated 16.4.2013, issued by the second respondent, is sought to be quashed in the present writ petition.

2. The writ petitioner was employed as Assistant Administrative Officer and retired from service on attaining the age of superannuation on 30.4.2012.

3. The learned counsel, appearing on behalf of the writ petitioner, states that the writ petitioner was allowed to retire from service on 30.4.2012. After his retirement, the impugned order of recovery was passed on 16.4.2013 based on the

audit objections passed by the Audit Branch.

4. The learned counsel for the writ petitioner urged this Court by stating that no recovery is permissible in respect of the retired employees. This apart, no notice or opportunity was given to the writ petitioner before issuing the impugned order of recovery by the second respondent. Thus, the impugned order is liable to be scrapped.

5. This Court is of an opinion that any order affecting the rights of an employee cannot be issued without providing an opportunity to the employee. This apart, payment of salary made inadvertently at the instance of the Department, cannot be recovered after the employee was allowed to retire from service. The legal principles in this regard are well settled in the case of State of Punjab vs. Rafiq Masih [(2015) 4 SCC 334], wherein the Hon'ble Supreme Court held in paragraph-18, 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. As per the abovesaid judgment, recovery from the retired employees are impermissible. In the present case on hand, there is no misrepresentation or otherwise on the part of the writ petitioner for erroneous claim of salary or otherwise. This apart, the writ petitioner was not issued with any notice in this regard.

7. Under such circumstances, the case of the writ petitioner deserves consideration. Accordingly, the impugned order passed by the second respondent in letter No.28099 C.No.1258 AB Fo7.F 71/PPO No.85910 dated 16.4.2013, is quashed. If any amount has already been recovered pursuant to the impugned order of recovery, the respondents are directed to repay the amount within a period of twelve weeks from the date of receipt of a copy of this order.

8. With the above directions, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Superintending Engineer,
Basin Bridge Gas Turbine Power Station,
Tamil Nadu Generation and Distribution
Corporation Limited,
Chennai-600 012.

2.The Internal Audit Officer,
Audit Branch,
Tamil Nadu Generation and Distribution
Corporation Limited,
144, Anna Salai, Chennai-600 012.

+1cc to Mr.P.R.Dhilipkumar, Advocate, S.R.No.74748
+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.74255

WP No.28859 of 2013

rrs 14/11/2018