BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.01.2018
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P. (MD) No. 11206 of 2011
and
M.P(MD)No.2 of 2011

S.M.Siraj ... Petitioner

Vs.

1.The Superintending Engineer,
Purchase and administration,
TANGEDCO,
MTPS, Mettur Dam,
Mettur-6.

2.The Internal Audit Officer,
CAP, TANGEDCO,
Audit Branch,
Mettur Dam, Mettur-6.

3.The Superintending Engineer,
Purchase and Administration,
TANGEDCO, TTPS,
Tuticorin-4. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Audit Slip No.8 dated 22/03/11 based upon the same, the petitioner's salary has been recovered vide the salary slip for the month of August 2011 and quash the entire proceedings and consequently direct the respondents herein to repay a sum of Rs.5,000/- which was recovered in the month of August 2011 in the petitioner's account under the head of the audit.

For petitioner : Mr.D.Saravanan
For Respondents : Mr. AU.Ramanathan

O R D E R

The order of revision of pay and recovery issued by the second respondent vide proceedings, dated 22.03.2011 is under challenge in this writ petition.

2. The learned counsel appearing on behalf of the petitioner made a submission that the writ petitioner was working as Junior Engineer, Grade-II and his pay was revised in accordance with the Board Proceedings, which was in force. However, based on the Audit objection, the revision of pay and recovery was imposed by the second respondent vide proceedings, dated 22.03.2011.

3.The learned counsel for the petitioner states that no show cause notice or opportunity was given to the writ petitioner before issuing the impugned order of recovery. Thus, the order impugned is in violation of principles of natural justice. This apart, there was no misrepresentation on the part of the writ petitioner at the time of sanctioning the revision of pay. Thus, the recovery is bad in law.

4.The learned counsel appearing on behalf of the respondents opposed the said contentions by stating that the revision of pay was effected in violation of Board proceedings and there was an error and the error was noticed by the Audit party. Thus, there is no irregularity in respect of revision of pay and recovery.

5.This Court is of the opinion that the authorities competent are empowered to correct the errors in respect of revision of pay. No doubt, the Audit objections are to be implemented in accordance with the Board proceedings in force. In the present case, the revision of pay and recovery was imposed based on the audit objection. However, no notice or opportunity was given to the writ petitioner. This Court is of the view that the correction of errors in the revision of pay is certainly permissible and the authority competent is empowered to correct the scale of pay in accordance with the Rules in force. However, the amount already paid shall not be recovered in view of the fact that there was no misrepresentation on the part of the employee nor it was granted at the instance of the employee. The learned counsel for the petitioner states that at present the writ petitioner has been promoted to the post of Assistant Engineer, which falls under Group-II category and at the time of recovery, he was in Class III post. Therefore, the recovery of excess amount cannot be effected. In this regard, the Hon'ble Supreme Court of India also enumerated the legal principles in the case of State of Punjab v. Rafiq Masih reported in (2015) 4 Supreme Court Cases 334 and held that in respect of Group-II employees, the correction of errors in respect of revision is permissible. However, recovery in respect of Group-III and IV employees are impermissible and in paragraph No.18 of the judgment is relevant and the same is extracted hereunder:-

"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 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

6. In view of the principles settled by the Hon'ble Supreme Court of India, the respondents are directed to effect the correct scale of pay as applicable to the writ petitioner in accordance with the Board proceedings by providing an opportunity and by issuing show cause notice to the petitioner. However, excess payment, if any, already paid need not be recovered.

7. Accordingly, the order impugned passed by the first respondent vide proceedings in Audit Slip No.8 dated 22.03.2011 is quashed and the writ petition is allowed by directing the respondents to correct the errors, if any, in the scale of pay by issuing show cause notice and by providing an opportunity to the writ petitioner and excess payment, if any, paid already need not be recovered. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To
1.The Superintending Engineer,
Purchase and administration,
TANGEDCO, MTPS, Mettur Dam, Mettur-6.
2.The Internal Audit Officer,
CAP, TANGEDCO, Audit Branch,
Mettur Dam, Metur-6.
3.The Superintending Engineer, Purchase and Administration,
TANGEDCO, TTPS, Tuticorin-4.

+One cc to Mr.D.Saravanan, Advocate, SR.No.43367

am/pnn
JM/5C/3P/MR/SAR4 /2/2/2018