



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2018

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.13688 of 2011
and
M.P. (MD) No.2 of 2011

1.A.Janarthanan
2.J.Josemercy Nesan
3.J.Antony Raj
4.M.Selvi
5.G.Muthiah
6.S.Subramanian
7.M.Mohamed Ansari
8.G.Manoharan
9.K.Periakarmegam
10.K.Thanabalan

... Petitioners

Vs.

The Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin - 4.

... Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the respondents proceedings in memo No.756/SE/P&A/TTPS/PRS II/AS/F Audit/2011 dated 28.09.2011 to quash the same.

For Petitioners : Mr.R.Thangasamy
For Respondent : No appearance

ORDER

The order of recovery issued against the writ petitioners in proceedings dated 28.09.2011, is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioners made a submission that the writ petitioners were initially appointed as Helpers and thereafter, promoted to the post of Fitter Grade II / Electrician Grade II. On account of the promotion, the pay applicable to the cadre was fixed in accordance with the rules in force. However, subsequently, it was found by the



respondent that there was an error in respect of the fixation already done and the Audit objection in this regard was also placed. Based on the Audit objection, the impugned order of recovery was issued in proceedings dated 28.09.2011. The learned counsel appearing for the petitioners states that the recovery order was issued without issuing any show cause notice or providing opportunity to the writ petitioners and therefore, the same is in violation of the principles of natural justice.

3.No representation on behalf of the respondent.

4.On a perusal of the impugned order, it is stated that the recovery is imposed based on the Audit objection. However, there is no reference in respect of the show cause notice if any issued. Therefore, this Court is inclined to consider the case of the writ petitioners, this apart the writ petitioners are working in Group III service and therefore, excess payment if any cannot be recovered and the respondent is at liberty to correct the revision of scale of pay as per the rules in force. The Hon'ble Supreme Court of India in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** reported in **(2015) 4 Supreme Court Cases 334** settled by the principles in paragraph 18, which is extracted here 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 the Class III and Class IV service (or Group C and Group D service).

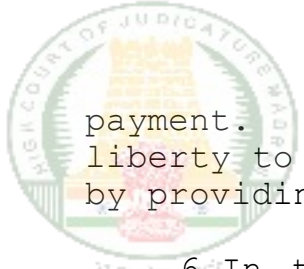
(ii) Recovery from the retired employees, or the employees, who are due to retire within one year, of the order of recovery.

(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.

5.As per Sub clause 1 of para 18 no recovery is permissible in respect of excess payment made as far as the employees working in the cadre of Group III and IV. Thus, the respondent cannot recover the amount from the petitioners in respect of excess



payment. However, it is made clear that the respondent is at liberty to correct the errors if any in the revision of scale of pay by providing an opportunity to the writ petitioners.

6. In this view of the matter, the impugned order of recovery issued by the respondent in proceedings dated 28.09.2011, is quashed and the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin - 4.

+ 1 CC TO Mr.R.THANGASAMY, ADVOCATE IN SR No. 43805

MM

TE/SKN-RSK/SAR-1 : 16/02/2018 : 3P/3C

W.P.(MD) No.13688 of 2011 and
M.P.(MD) No.2 of 2011
23.01.2018