



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2018

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.4743 of 2011

S.Durairaj

... Petitioner

.vs.

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited,
144, Anna Salai,
Chennai - 600 002.

2. The Superintending Engineer,
Theni Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited,
Theni.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus call for the records relating to the second respondent's Ref.No.Ku.Aa.No./U.Ni.Aa/Ni.Pi.3/Ni.U.2/Ko.Audit slip/ Aa.No.00511 / 2010, dated 29.4.2010 and to quash the same and consequently to direct the respondents to refund the recovered sum of Rs.60,933/- (Rupees sixty thousand nine hundred and thirty three only) to the Petitioner.

For Petitioner : M/s.R.Thangasamy

For Respondents : Mr.S.M.S.Johnny Basha

1 and 2 Standing Counsel for TNEB

O R D E R

The order of recovery issued by the second respondent by proceedings, dated 29.4.2010, is under challenge in this Writ Petition.

2.The learned counsel for the Writ Petitioner made a submission that the Writ Petitioner was initially appointed as Tester(Chemical) by way of direct recruitment and later on, he was appointed as Junior Assistant through internal selection during the year 1999. Thus, the scale of pay as applicable to the post of Junior Assistant was fixed to the Writ Petitioner. However, there was an audit objection subsequently in respect of fixation of pay. The learned



counsel for the Writ Petitioner states that there was no error whatsoever in respect of the fixation made to the Petitioner as applicable to the post of Junior Assistant.

3. The learned counsel for the respondents opposed the said contentions by stating that admittedly no notice was issued to the Writ Petitioner before passing the order of recovery. However, liberty may be granted to the respondents to issue show-cause notice and thereafter to impose recovery.

4. Such a contention cannot be accepted in view of the fact that there was no misrepresentation or otherwise on the part of the Writ Petitioner at the time of fixation of pay. This apart, the recovery was imposed based on the audit objection and without providing an opportunity to the Writ Petitioner. The Petitioner was subsequently promoted to the post of Assistant and his pay was further revised as per the Board Proceedings. This being the factum of the case, this Court is of the considered view that whether recovery can be imposed in respect of excess payment made. In this regard, the Honourable Supreme Court of India in the case of **State of Punjab v. Rafiq Masih reported in (2015) 4 Supreme Court Cases 334** in paragraph No.18 of the judgment is relevant and held as follows:-

"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."

5. The post of Junior Assistant falls in Clause-III post and the Apex Court held that even if there is any excess payment made, the same cannot be recovered in respect of Clause-III and IV employees. During the relevant point of time, the Writ Petitioner is



holding the post of Clause-III post in the category of Junior Assistant and therefore, recovery is impermissible. However, corrections, if any, can be made by the authorities only after providing ample opportunity to the Writ Petitioner in accordance with the rules in force.

6. In this view of the matter, the order impugned passed by the second respondent in Ref.No.Ku.Aa.No./U.Ni.Aa/Ni.Pi.3/Ni.U.2/Ko. Audit slip/Aa.No.00511/2010, dated 29.4.2010 is quashed and the Writ Petition is allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

+ 1 CC TO Mr.R.THANGASAMY, ADVOCATE IN SR No. 43804
+ 1 CC TO Mr.S.M.S.JOHNNY BASHA, ADVOCATE IN SR No. 43380

VSN

TE/KKR/SAR-3 : 07/02/2018 : 3P/3C

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