



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.17578 of 2013

and

M.P.(MD) No.1 of 2013

S.Benjamin Joshua

... Petitioner

Vs.

The Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tamil Nadu Generation & Distribution
Corporation Ltd.,
Tuticorin - 4.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the respondents Lr.No.SE/P & A/TTPS/AA do/AS/PRS1/A7/F Audit/D274/2013 dated 26.09.2013, to quash the same.

For Petitioner : Mr.T.Arul

For Respondent : Mr.AU.Ramanathan

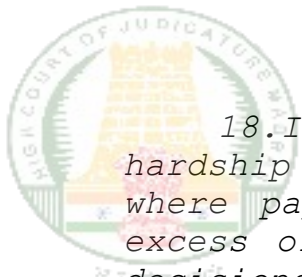
O R D E R

The order of recovery issued based on the audit objection dated 26.09.2013 is under challenge in this writ petition.

2.The writ petitioner was holding the post of Executive Engineer in Tamil Nadu Electricity Board, and retired from service on 28.02.2006 on attaining the age of superannuation.

3.The learned counsel for the writ petitioner states that the impugned order of recovery was issued based on the audit objection and without issuing any show cause notice or opportunity to the writ petitioner. If the audit objection raised was erroneous and the writ petitioner was not responsible for any such excess payment in respect of the excess claim of the interest from the writ petitioner.

4.May that it be, this Court is of an opinion that the writ petitioner is a retired Government employee and recovery cannot be imposed after the retirement. This apart, no notice or opportunities was provided to the writ petitioner before taking a decision in this regard. The legal principles are settled by 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. In view of the fact that no notice or opportunities was provided to the writ petitioner before issuing the impugned order of recovery and the writ petitioner have an age of pensioner, this Court is inclined to consider the present writ petition. Accordingly, the order impugned relating to the respondents in Lr.No.SE/P & A/TTPS/AA do/AS/PRS1/A7/F Audit/D274/2013 dated 26.09.2013, is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub-Assistant Registrar

To
The Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tamil Nadu Generation & Distribution Corporation Ltd.,
Tuticorin - 4.

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RL/2C/2P/SKN/RSK/SAR1/19/4/2018