

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.10809 of 2011
and
M.P.No.1 of 2011

K.Manokar

.. Petitioner

Vs.

The Superintending Engineer,
Namakkal Electricity Division Circle,
Tamil Nadu Generation & Distribution Company,
Namakkal, Namakkal District. .. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus calling for the records relating to the order of the Respondent in Letter No.173/Adm.I/A.1/F.Fixation/10 dated 30.04.2010 and the consequential Letter No.786/Ni.Pi.111/Ni.Asst.1/Ko./2010 dated 07.07.2010 and quash the same and direct the Respondent to forthwith pay the entire retirement benefits, earned leave benefits and other benefits due to the Petitioner.

For Petitioner : Mr.K.Selvaraj

For Respondent : Mr.S.Santhana Krishnan for
Mr.P.R.Dhilip Kumar
(Standing Counsel for TNEB)

O R D E R

Writ Petition filed for issuance of writ of Certiorarified Mandamus, calling for the records relating to the order of the Respondent in Letter No.173/Adm.I/A.1/F.Fixation/10 dated 30.04.2010 and the consequential Letter No.786/Ni.Pi.111/Ni.Asst.1/Ko./2010 dated 07.07.2010 and quash the same and direct the Respondent to forthwith pay the entire retirement benefits, earned leave benefits and other benefits due to the Petitioner.

2. According to the petitioner, while he was working as Assistant Engineer (Electrical), he was imposed 10 punishments of withholding annual increments and reduction of pay. He was permitted to retire from service on 30.11.2009 and on that date, the punishments 6 to 10 were not effected. After his retirement, the respondent by the impugned order dated 30.04.2010, informed the petitioner that he has to pay a sum of Rs.79,800/- being the unexpired portion of punishment. Subsequently, the respondent by the impugned order dated 07.07.2010, ordered that a sum of Rs.1,77,002/- being the amount totally payable towards unexpired portion of punishment and excess amount paid to him. The petitioner was informed that a sum of Rs.67,208/- being leave encashment amount payable to him was adjusted and called upon the petitioner to pay the balance amount of Rs.1,09,794/-. In the said impugned order, the petitioner was informed that only on payment of said amount, his gratuity and pension would be calculated and paid to him. The petitioner challenging both the impugned orders, has come out with the present Writ Petition.

3. At the time of hearing, the learned counsel appearing for the petitioner submitted that the petitioner is not pressing the Writ Petition with regard to impugned order dated 30.04.2010, whereby the petitioner was called upon to pay a sum of Rs.79,800/- being the amount payable for unexpired portion of punishment and made endorsement to that effect.

4. As far as deduction of excess payment of Rs.97,202/- is concerned, the learned counsel appearing for the petitioner submitted that the respondent is not entitled to deduct the said amount being allegedly paid in excess after his retirement and after lapse of time. In support of his contention, the learned counsel appearing for the petitioner relied on the judgment of the Hon'ble Apex Court reported in 2015 (5) CTC 455 [State of Punjab and others, etc. Vs. Rafiq Masih (White Washer), etc.], wherein at paragraph No.12, it has been held as follows:

“...12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

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

(iii) Recovery from 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."

The learned counsel appearing for the petitioner relying on the above judgment contended that respondent is not entitled to deduct a sum of Rs.97,202/-, the alleged excess payment and respondent can deduct a sum of Rs.67,208/- being the amount for leave encashment and balance sum of Rs.12,592/- from terminal benefits towards amount payable for the unimplemented period of punishment for stoppage of increment and pay the gratuity and pension and prayed to quash the impugned order dated 07.07.2010 in so far of alleged excess payment.

5.The respondent has not filed counter affidavit. Mr.S.Santhana Krishnan, learned counsel representing Mr.P.R.Dhilip Kumar, contended that in view of 10 punishments suffered by the petitioner, the amounts recoverable for punishments 6 to 10 could not be recovered as the petitioner has retired from service on 30.11.2009. Further, on verification of salary payable to the petitioner, it was found, the scale of pay of the petitioner was wrongly fixed in the year 1994 and the excess amounts were paid. The petitioner is not entitled to the excess amount paid to him. Both the impugned orders are valid and prayed for dismissal of the Writ Petition.

6. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials on record.

7. The petitioner is not pressing the Writ Petition with regard to impugned order dated 30.04.2010 and made an endorsement to that effect and the Writ Petition is dismissed with regard to challenging the impugned order dated 30.04.2010.

8. As far as claim of excess payment is concerned, it is seen from the impugned order dated 07.07.2010 according to the respondent excess amounts were paid to the petitioner from the year 1994, till he retired from service. The respondent is seeking to recover the said amounts after the petitioner retired from service. The contention of the learned counsel appearing for the petitioner that the respondent is not entitled to recover the said amount after lapse of long period and after retirement of the petitioner has considerable force. The judgment of the Hon'ble Apex Court referred to above relied on by the learned counsel for the petitioner is squarely applicable to the facts of the present case in respect of recovery of amounts.

9. In the result, this Writ Petition is allowed in part and the impugned order dated 07.07.2010 in respect of recovery of a sum of Rs.97,202/-, being the alleged excess amount payable by the petitioner to the respondent is set aside. The respondent is directed to calculate the gratuity and pension payable to the petitioner and after adjusting a sum of Rs.67,208/- being the leave encashment and Rs.12,592/- from terminal benefits towards Rs.79,800/- being unexpired portion of punishment, pay the gratuity and pension within a period of eight weeks from the date of receipt of a copy of this order together with interest at the rate of 12% and continue to pay the pension. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

krk

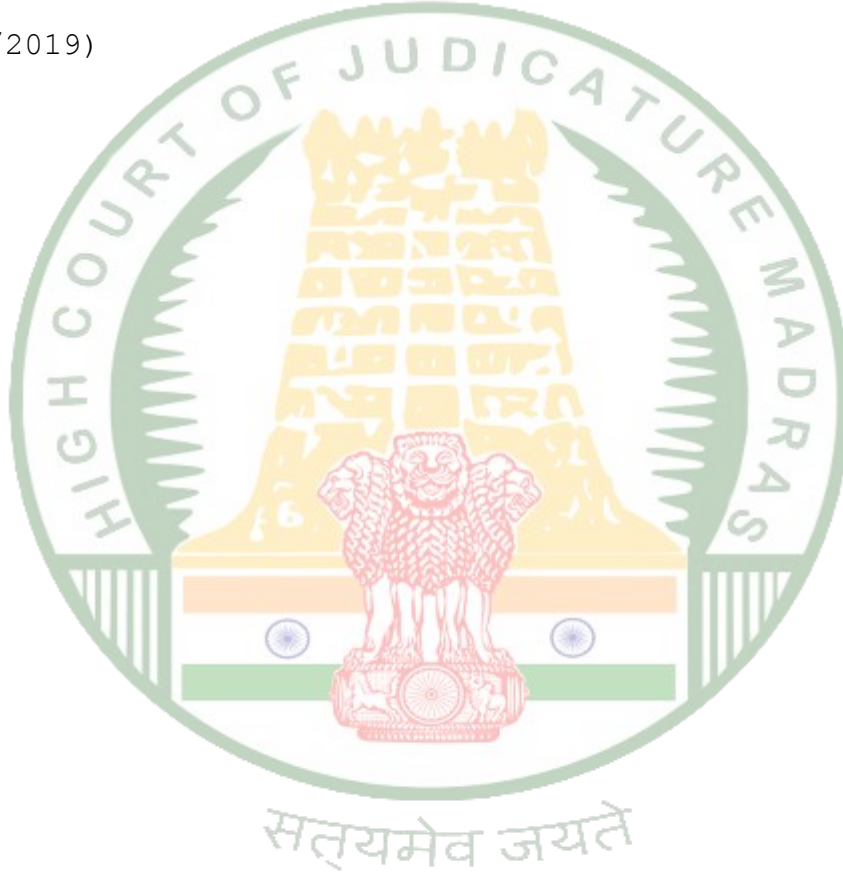
To

The Superintending Engineer,
Namakkal Electricity Division Circle,
Tamil Nadu Generation & Distribution Company,
Namakkal, Namakkal District.

+lcc to Mr.K.Selvaraj, Advocate SR.No.57259

W.P.No.10809 of 2011 and
M.P.No.1 of 2011

RSI (CO)
GMY (26/08/2019)



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