

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.10062 of 2008

and

M.P.No.1 of 2008

Krishnaraj

... Petitioner

Vs.

The Executive Engineer,
(Operation and Maintenance),
Tamil Nadu Electricity Board,
Paramathi Velur - 638 182.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records relating to the proceedings of the respondent made in Memo No.733/Adm.Sup.(1)/F.Fix/2007 dated 19.05.2007 and quash the same.

For Petitioner : Mr.Y.Ramanaiah

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

O R D E R

Writ Petition is filed for issuance of a writ of Certiorari to call for the records relating to the proceedings of the respondent made in Memo No.733/Adm.Sup.(1)/F.Fix/2007 dated 19.05.2007 and quash the same.

2.According to the petitioner, he was appointed as Helper on 19.11.1993 in the service of Tamil Nadu Electricity Board. His salary was fixed at Rs.3,275/- with effect from 01.12.1996 by pay fixation authority without any representation made by the petitioner. The petitioner was a Class III employee and was promoted as Wireman and was working as such at the time of filing the Writ Petition. The respondent by the impugned proceedings dated 19.05.2007 has stated that the petitioner was paid an excess sum of Rs.17,384/- and ordered recovery of the

same in 12 monthly installments at the rate of Rs.1,500/- per month from his pay.

3.The learned counsel appearing for the petitioner contended that the said recovery is ordered without issuing any notice to the petitioner and after 11 years of pay fixation. The salary at Rs.3,275/- was voluntarily fixed by the pay fixation authority, without any request from the petitioner and impugned order is invalid and illegal and referred to the judgment of the Hon'ble Apex Court reported in (2015) 4 SCC 334 [State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others]. After considering various judgments of this issue, in para-18, the Hon'ble Apex Court has 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 be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

For the above reason, the petitioner prayed for quashing the impugned order of the respondent dated 19.05.2007.

4.The respondent Board filed counter statement and Mr.S.Santhana Krishnan, learned counsel representing Mr.P.R.Dhilip Kumar (Standing Counsel for TNEB) contended that the pay of the petitioner was inadvertently fixed at Rs.3,275/- instead of Rs.3,200/-. The petitioner was paid excess amount for which he is not entitled to. The Board has power to recover the excess amount from its employees. It is not correct to state that recovery was ordered without any notice to the petitioner. On the other hand, the petitioner was informed about the recovery in memo dated 19.05.2007 and then only recovery was effected. The order of this Court in Writ Petition No.1996 of 1994 referred by the petitioner relates only to the individual in that case and the said order was not issued against the Tamil Nadu Electricity Board for all similar persons in this regard. The petitioner is not entitled to excess amount paid to him and recovery order issued by the respondent Board is valid and legal and prayed for dismissal of the writ petition.

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

6.From the materials available on record, it is seen that it is the contention of the petitioner that he did not seek for any fixation of his pay at Rs.3,275/-. According to the petitioner, the pay fixation authority voluntarily fixed the pay of the petitioner. It is not the case of the respondent that the petitioner sought revision of pay and on his misrepresentation, the pay was fixed. On the other hand, in the counter affidavit, the respondent has admitted that inadvertently, higher pay was fixed for the petitioner. This admission clearly shows that the petitioner was not at fault, when his pay was fixed at Rs.3,275/-. The second contention of the learned counsel appearing for the petitioner is that the recovery is ordered after eleven years of fixation without any notice to the petitioner. The respondent in the counter affidavit has denied the said contention and contended that by memo dated 19.05.2007, the petitioner was informed about the recovery and then only recovery is made. The contention of the learned counsel appearing for the respondent is without merits. The memo dated 19.05.2007 is impugned in the writ petition. The contention of the learned counsel for the petitioner that before the impugned memo, no show cause notice was issued to the petitioner is not disputed by the respondent in the counter affidavit. In view of the same, the contention of the learned counsel for the

petitioner that recovery is ordered without notice, is acceptable.

7.The issue of recovery of excess amount from the employee is considered by the Hon'ble Apex Court in the judgment referred to above in paragraph No.18. The Hon'ble Apex Court enumerated some of the situations, wherein the recovery cannot be made. The situation Nos.(i) and (iii) mentioned therein are squarely applicable to the facts and circumstances of the present case. The Hon'ble Apex Court in the said clauses has held that if an employee belonging to clause-III has been paid excess payment for a period in excess of five years before the order of recovery is issued, the employer is not entitled to recover the excess payment. In the present case, the contention of the petitioner that he is working as Class III employee was not denied by the respondent and the pay of the petitioner was fixed at Rs.3,275/- with effect from 01.12.1996. The respondent paid the said amount from that date and only by the impugned memo dated 19.05.2007 has stated that the respondent has paid excess amount from 01.12.1996 to 30.04.2007 and is seeking to recover the excess amount after eleven years of fixation of pay of the petitioner. Applying the principle laid down by the Hon'ble Apex Court in the judgment referred to above, the impugned memo dated 19.05.2007 is liable to be quashed and it is hereby quashed.

8.In the result, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Executive Engineer,
(Operation and Maintenance),
Tamil Nadu Electricity Board,
Paramathi Velur - 638 182.

+1cc to M/s.S.Elangovan, Advocate Sr.49600

W.P.No.10062 of 2008 and
M.P.No.1 of 2008

ssd[co]
srg 24/07/2019