

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.39400 of 2005

&

W.P.M.P.No.42220 of 2005

1.R.Kuppusamy
2.N.Manickam
3.E.Margandan
4.G.Venkatsan

...Petitioners

Vs

1.The Superintending Engineer,
Tirupattur Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Tirupattur, Vellore District 635 601.

2.The Executive Engineer,
Tirupattur Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Gudiyattam, Vellore District 635 602.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records pertaining to the order Ku.A.No.60 -1/i.ni.vu / false educational certificate / 2004, dated 11.06.04 of the 2nd respondent and quash the same and consequently direct the respondents to pay the recovered amount to the petitioners.

For Petitioners : Mr.S.T.Varadarajalu

For Respondents : Mr.Fakkir Mohideen

WEB COPY
O R D E R

This petition has been filed seeking to quash the order dated 11.06.04 in Ku.A.No.60 -1/i.ni.vu / false educational certificate / 2004 on the file of the 2nd respondent and consequently, direct the respondents to pay the recovered amount to the petitioners.

2. The petitioners herein were employed as contract workmen in the year 1980. As per the recommendations of Justice Khalid Commission, they were appointed as helpers and put on scale of pay in the year 1995. In the year 2000, the petitioners were promoted as wiremen. On 22.10.2001, the petitioners were suspended on the ground that they produced bogus educational certificate for their promotions to the post of wiremen. The petitioners herein had also challenged the suspension order in W.P.No.2646 of 2004 and an order of interim stay was obtained. Subsequently, the respondents had issued board proceedings No.27 dated 07.11.2002, whereby the period of suspension was ordered to be regularized and the employees, who were challenged the suspension order and obtained stay, were directed to be reinstated in service without prejudice to the disciplinary proceedings to be initiated and the suspended period was treated as duty period.

3. Thereafter, the petitioners were reinstated in the month of may 2003 and their time scale of pay was reduced to the minimum level of the post held on the date of imposing punishment, for a period of three years as per board proceedings No.27. On 17.06.2003, the suspension order was regularized as duty period.

4. While that being so, on 03.01.2004, the earlier order dated 17.06.2003 came to be modified and the suspension period was directed to be treated as Earned leave and the remaining period was directed to be treated as leave and loss of pay. This order came to be challenged by the petitioners in W.P.No.2384 of 2006 and by order dated 31.03.2008, this Court had set aside the earlier order dated 03.01.2004, modifying the order dated 17.06.2003.

5. In the mean time, the respondents herein had issued a recovery order dated 11.06.2004 seeking to recover excess payment made, pursuant to their order dated 03.01.2004. This recovery order is impugned in the present writ petition.

6. Originally, when the impugned order of recovery came to be passed by the respondents, there could not have been any infirmity, since the recovery was sought to be made, pursuant to their earlier order dated 03.01.2004. The petitioners had subsequently chosen to challenge the original order dated 03.01.2004, which was allowed by this Court on 31.03.2008 and the order dated 03.01.2004 was set aside.

7. The present impugned order is a consequential order, pursuant to the original order dated 03.01.2004 which was set aside by this court in W.P.No.2384 of 2006. When the original order itself has been set aside, the consequent recovery order

cannot be sustained.

8. At this juncture, the learned standing counsel appearing for the petitioners submitted that pursuant to the direction of this Court, another recovery order has been issued in the month of October 2010.

9. The cause of action for the present writ petition is to a recovery order pursuant to the original order dated 03.01.2004, which is apparently become infructuous, in view of the order of this Court setting aside the earlier order dated 03.01.2004. If at all the petitioners are aggrieved against the subsequent recovery order, it is always open to them to challenge the same through an independent proceedings and as such, the second recovery order in the month of October 2010 may not have any bearing in this writ petition.

10. In the light of the above observations, this writ petition stands allowed and impugned order dated 11.06.2004 on the file of the first respondent is set aside. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

nl

To

1.The Superintending Engineer,
Tirupattur Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Tirupattur, Vellore District 635 601.

2.The Executive Engineer,
Tirupattur Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Gudiyattam, Vellore District 635 602.

+1cc to Mr.S.T.Varadarajalu, Advocate SR.No.39535

W.P.No.39400 of 2005

KS (CO)
GMY (01/07/2019)