



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.34171 of 2012

S.Thangavelu

.. Petitioner

Vs.

Deputy Chief Internal Audit
Officer/Pension
Tamil Nadu Electricity Board
Board office Audit Branch
1st floor, NPKRR Maligai No.800
Anna salai, Chennai-600 002.

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records of the respondent in D.O.L.R.No.33411/F10/F101/BOAB/2005, dated 29.08.2005 and quash the same as illegal and non-est in law and consequently, direct the respondent to refund the recovered pay and allowances of Rs.55,118/- to the petitioner and revise the petitioner pensionary benefits by re-fixing the petitioner Last Drawn Pay at Rs.7,700/- + 110 PP (Personal Pay) and grant arrears of pension, DCRG (Death-cum-Retirement Gratuity) and all other attended service benefits.

For Petitioner : Mr.B.Vijay

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

O R D E R

Writ Petition is filed for issuance of a writ of Certiorarified Mandamus calling for the records of the respondent in D.O.L.R.No.33411/F10/F101/BOAB/2005, dated 29.08.2005 and quash the same as illegal and non-est in law and consequently, direct the respondent to refund the recovered pay and allowances of Rs.55,118/- to the petitioner, revise the petitioner's pensionary benefits by re-fixing the petitioner's



last drawn pay at Rs.7,700/- + 110 PP (Personal Pay), grant arrears of pension, DCRG (Death-cum-Retirement Gratuity) and all other attended service benefits.

2. Heard the learned counsel appearing for the petitioner as well as the learned Standing Counsel appearing for the respondent and perused the materials available on record.

3. The grievance of the petitioner is that when he retired on 31.05.2005, his last drawn salary was fixed at Rs.7,700/- + 110 PP (Personal Pay) and the same was taken into account for sanctioning pensionary benefits, DCRG (Death-cum-Retirement Gratuity) and other attendant benefits. The respondent without any notice to the petitioner, by the impugned order dated 29.08.2005 re-fixed the petitioner's salary as Rs.7,525/- + 155 PP (Personal Pay). The respondent has also ordered recovery of excess amount of pay and allowances for the period from 01.12.2004 to 31.05.2005. Without any notice to the petitioner, the respondent has ordered recovery of Rs.55,118/- from his pay and the same is illegal and arbitrary. The petitioner did not misrepresent to the respondent for fixation of personal pay in the year 1984. The respondent has not re-fixed the salary of one M. Subramaniam, retired Revenue Supervisor, who is also a similarly placed person like the petitioner. The impugned order of the respondent is in violation of the principles of natural justice and prayed for allowing the writ petition. In support of his contention, the learned counsel relied on 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



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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. "

4. The learned Standing Counsel appearing for the respondent contended that the petitioner was granted excess payment from 01.12.1984 till 31.05.2005 i.e., date of his retirement. The petitioner is not entitled to pay as fixed on 01.12.1984. The pay was fixed erroneously and therefore, by the impugned order, the petitioner's pay was re-fixed and excess amount of Rs.55,118/- was rightly recovered from the terminal benefits of the petitioner.

5. From the materials available on record, it is seen that the respondent has contended that pay of the petitioner was wrongly fixed in November 1984 and it continued till his retirement on 31.05.2005 and therefore, his salary was re-fixed and recovery of excess amount was ordered. The said contentions are without merits. The impugned order of the respondent is not sustainable in law as admittedly the pay of the petitioner was not fixed on misrepresentation by the petitioner. The respondent by the impugned order is seeking to recover the amount after the petitioner has retired from service. The petitioner's pay was fixed in the year 1984 and based on the said fixation of pay, the petitioner was paid and subsequently, his pay was fixed on various dates and he was granted benefits on that basis. While so, the order of the respondent re-fixing the salary of the petitioner without any notice to him, after 21 years is invalid. The respondent has fixed the pay of the petitioner without any representation or misrepresentation by the petitioner. The pay of the petitioner was fixed voluntarily by the respondent. In view of the same, the impugned order of the respondent re-fixing the petitioner's pay after his retirement and ordering recovery after 21 years, is illegal and is liable to be set aside and is hereby set aside. The respondent is not entitled to recover a sum of Rs.55,118/- from the terminal benefits of the petitioner. The judgment relied on by the learned counsel appearing for the petitioner is squarely applicable to the facts of the present case.

6. For the above reason, the impugned order of the



respondent is quashed. The respondent is directed to refund a sum of Rs.55,118/- recovered from the petitioner together with interest within a period of two weeks from the date of receipt of a copy of this order. The respondent is directed to calculate the pension and other benefits based on the original last drawn salary fixed as Rs.7,700/- + 110 PP (Personal Pay) and pay the pension and other benefits.

7. In the result, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To
Deputy Chief Internal Audit
Officer/Pension
Tamil Nadu Electricity Board
Board office Audit Branch
1st floor, NPKRR Maligai No.800
Anna salai, Chennai-600 002.

+3cc to Ms.B.Vjay, Advocate SR.No.58193

+1cc to Ms.R.Varalakshmi, Advocate SR.No.57772

W.P.No.34171 of 2012

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