IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.10.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.31528 & 31529 of 2013
and MP Nos.3,3,4 & 4 of 2013

S.Gopalji Salai Kumar ... Petitioner in WP No.31528 of 2013
S.Muthulakshmi ... Petitioner in WP No.31529 of 2013

Vs

1. The Chairman and Managing Director,
Tamil Nadu Electricity Board (TNEB),
Anna Salai, Chennai - 2.

2. The Chief Engineer (Personnel),
Tamil Nadu Electricity Board (TNEB),
Anna salai, Chennai - 2.

3. The Superintending Engineer,
Tirunelvi Electricity Distribution Circle,
TANGEDCO,
Tirunelveli - 11.

4. The Deputy Chief Internal Audit Officer,
Board of Audit Branch,
TANGEDCO, Tirunelveli Region,
Tirunelveli - 1 ... Respondents in both WPs

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings vide (Per) B.P (CH) No.17 (ADM Branch) dated 08.03.2010 issued by the 2nd respondent and quash the same and to call for the records relating to the impugned letter o.P808/P.547/F.33/F.339.1/2013 dated 08.10.2013 issued by the 4th respondent and to consequently direct the respondents to revise and refix the pay and other benefits from 2007 in respect of the petitioner in the post of Junior Assistant (ADM) under 33(b) of the TNEB Service Regulations as ordered in the B.P.No.152 dated 05.05.2007 and further direct the third respondent not to recover the excess amount as ordered in impugned letter No.P808/P.547/F.33/F.339.1/2013 dated 08.10.2013.

For Petitioners in both WPs : Mr.Govindaprasad

For Respondents in both WPs : Mr.P.R.Dilip Kumar
Standing Counsel for TNEB

COMMON ORDER

The instant writ petitions are for a writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings vide (Per) B.P (CH) No.17 (ADM Branch) dated 08.03.2010 issued by the 2nd respondent and to call for the records relating to the impugned letter o.P808/P.547/F.33/F.339.1/2013 dated 08.10.2013 issued by the 4th respondent and quash the same. Consequently, seeking for a direction to the respondents to revise and refix the pay and other benefits from 2007 in respect of the petitioner in the post of Junior Assistant (ADM) under 33(b) of the TNEB Service Regulations as ordered in the B.P.No.152 dated 05.05.2007 and further direction to the third respondent not to recover the excess amount as ordered in impugned letter No.P808/P.547/F.33/F.339.1/2013 dated 08.10.2013.

2. The learned counsel for the petitioner has confined his argument only to the issue of recovery of the amount from the petitioners due to wrong fixation of pay scale. This issue according to the petitioner is rightly covered by the Judgement of the Hon'ble Supreme Court in 2015 4 SCC 334 in [State of Punjab and others Vs. Rafiq Masih (White Washer) and others}. The Hon'ble Supreme Court has observed as under :-

> 11. For the above determination, we shall refer to some precedents of this Court wherein the question of recovery of the excess amount paid to employees, came up for consideration, and this Court disallowed the same. These are situations, in which High Courts all over the country, repeatedly and regularly set aside orders of recovery made on the expressed parameters.
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> 12. Reference may first of all be made to the decision in Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475, wherein this Court recorded the following observation in paragraph 58:
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> "58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, 1995 Supp. (1) SCC 18, Shyam

Babu Verma v. Union of India, (1994) 2 SCC 521, Union of India v. M. Bhaskar, (1996) 4 SCC 416, V. Ganga Ram v. Director, (1997) 6 SCC 139, Col. B.J. Akkara (Retd.) v. Govt. of India, (2006) 11 SCC 709, Purshottam Lal Das v. State of Bihar, (2006) 11 SCC 492, Punjab National Bank v. Manjeet Singh, (2006) 8 SCC 647 and Bihar SEB v. Bijay Bahadur, (2000) 10 SCC 99."(emphasis is ours)

13.First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir's case (supra) recognized, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee.

14. In this context, reference may also be made to the decision rendered by this Court in Shyam Babu Verma v. Union of India (1994) 2 SCC 521, wherein this Court observed as under: "11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the

recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."(emphasis is ours)

It is apparent, that in Shyam Babu Verma's case (supra), the higher pay- scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984, i.e., after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay-scale would not be just and proper. We therefore hereby hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India.

15. Examining a similar proposition, this Court in Col. B.J. Akkara v. Government of India, (2006) 11 SCC 709, observed as under: "28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."(emphasis is ours) A perusal of the aforesaid observations made by this Court in Col. B.J. Akkara's case (supra) reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, inasmuch

as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. In the observation extracted above, this Court also recorded, that recovery from employees in lower rung of service, would result in extreme hardship to them. The apparent explanation for the aforesaid conclusion is, that employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e., Class-III and Class-IV - sometimes denoted as Group 'C' and Group 'D') of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India.

16. This Court in Syed Abdul Qadir v. State of Bihar (supra) held as follows:

"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter- affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."(emphasis is ours) Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in Syed Abdul Qadir's case (supra), that recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

3. The learned counsel for the petitioner has also relied upon the order of this Court dated 07.12.2010 in WP No.25240 of 2012, wherein, the similar relief was granted to one Mr.P.Manivannan.

4. In view of the above fact, these writ petitions are partly allowed inasmuch as the order of recovery issued to the petitioners in Lr.No.P808/P.547/F.33/F/339.1/2013 dated 08.10.2013, due to wrong fixation of pay are hereby set aside. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To
1. The Chairman and Managing Director,
Tamil Nadu Electricity Board (TNEB),
Anna Salai, Chennai - 2.

2. The Chief Engineer (Personnel),
    Tamil Nadu Electricity Board (TNEB),
    Anna salai, Chennai - 2.

3. The Superintending Engineer,
    Tirunelvi Electricity Distribution Circle,
    TANGEDCO,
    Tirunelveli - 11.

4. The Deputy Chief Internal Audit Officer,
    Board of Audit Branch,
    TANGEDCO, Tirunelveli Region,
    Tirunelveli - 1

+2ccs to Mr.K.S.Govinda prasad , Advocate SR.No. 88950
+1cc to Mr.P.R.Dilip kumar , Advocate SR.No. 89168

W.P.Nos.31528 & 31529 of 2013
and MP Nos.3,3,4 & 4 of 2013

A.SK(11/12/2019)