

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.03.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27961 of 2018
and
W.M.P.No.32526 of 2018

A.Bhuvaneswari

.. Petitioner

..vs..

- 1.The Chairman,
The Tamil Nadu Generation and Distribution Corporation,
TANGEDCO, Anna Salai, Chennai - 2.
- 2.The Chief Engineer Personnel,
TANGEDCO, Anna Salai, Chennai -2.
- 3.The Superintending Engineer,
TEDC, TANGEDCO,
Thiruvanamalai - 606 604.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of 3rd respondent in memo No.SET/Adm.I/A.3/F.Audit/2017 dated 10.01.2018 and quash the same and consequently direct the respondents to settle the arrears within the time fixed by this Court.

For Petitioner : Mr.B.Manoharan

For Respondents: Mr.P.R.Dhilip Kumar, Standing Counsel

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O R D E R

The order of re-fixation of pay and the consequential recovery issued by the respondents in proceedings dated 10.01.2018, is under challenge in the present writ petition.

2. Based on the Board Proceedings and as per the Pay Rules in force, there was no misrepresentation or otherwise on the

part of the writ petitioner while fixing scale of pay, as applicable to the cadre in which the writ petitioner is working. However, the impugned order of revision of scale of pay and recovery is passed, surprisingly, and without any notice and opportunity to the writ petitioner.

3. The learned counsel for the writ petitioner states that no show-cause notice has been issued before taking a decision to revise the scale of pay of the writ petitioner. Thus, the impugned order is in violation of the principles of natural justice.

4. The learned counsel appearing on behalf of the respondents is unable to establish that, a show cause notice and an opportunity to defend the case of the writ petitioner had been provided before passing the impugned order of revision of pay and recovery.

5. This being the factum, this Court is of a considered opinion that the impugned order is liable to be scrapped and any order effecting the service benefits of an employee has to be issued only after providing an opportunity to such employee.

6. In the present case on hand, the impugned order of revision of pay and recovery was issued based on the audit objections and no notice was issued to the writ petitioner. This apart, the writ petitioner is serving in Grade - D services and the excess pay if at all paid, the same cannot be recovered in view of the legal principles settled by the Apex Court of India in the case of *State Of Punjab & Ors vs Rafiq Masih* [2015 (4) SCC 334]. The Hon'ble Supreme Court laid down the legal principles in the matter of recovery in paragraph No.18 of the Judgement, which is extracted hereunder:

"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."

7. In view of the principles cited supra, even in respect of the excess salary already paid to the respondents cannot recover the same. However, the respondents are empowered to correct the scale of pay and pay the admissible as per the rules in force. Accordingly, the following orders are passed:

(i) The impugned order passed by the third respondent in proceedings No.SET/Adm.I/A.3/F.Audit/2017, dated 10.01.2018, is quashed.

(ii) The respondents are directed to issue show-cause notice to the writ petitioner within a period of four weeks from the date of receipt of a copy of this order. Setting out the details regarding the revision of scale of pay and on receipt of the show cause notice the writ petitioner is directed to submit her objections / explanations within a period of four weeks from the date of receipt of a copy of the show-cause notice to be issued by the respondent. On receipt of the explanation, the respondents are directed to consider the same and pass orders on merits in accordance with law within a period of four weeks there from. The respondents are directed not to recover the excess payment already paid to the writ petitioner and the amount already recovered, the same is to be reimbursed to the writ petitioner within a period of 12 weeks from the date of receipt of a copy of this order. However, the revised scale of pay, as applicable, shall be fixed in accordance with the rules in force.

8. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

Pns

To

- 1.The Chairman,
The Tamil Nadu Generation and Distribution Corporation,
TANGEDCO, Anna Salai, Chennai - 2.
- 2.The Chief Engineer Personnel,
TANGEDCO, Anna Salai, Chennai -2.
- 3.The Superintending Engineer,
TEDC, TANGEDCO,
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+1cc to Mr.P.R.Dhilipkumar, Advocate SR.No.27720

W.P.No.27961 of 2018
and
W.M.P.No.32526 of 2018

CP (CO)
GMY (20/05/2019)

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