BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.21051 of 2015
and
M.P.(MD).Nos.1 and 2 of 2015

A.Nagarajan ... Petitioner

Vs.

1.The Assistant Audit Officer,
Tamil Nadu Electricity Generation &
Distribution Corporation Ltd.,
Audit Branch (AP 5)
Madurai Region, Madurai-7.

2.The Chief Engineer/Personel
Tamil Nadu Electricity Generation and
Distribution Corporation Ltd.,
144, Anna Salai,
Chennai-2.

3.The Superintending Engineer,
Dindigul Electricity Distribution Circle,
TANGEDCO,
Dindigul. ... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the 1st respondent's Audit objection dated 14.05.2015 in their Audit Slip No.25 to quash the same and further to pass an order directing the respondents to continue the payment of conveyance allowance to the petitioner.

For Petitioner : Mr.R.Thangasamy
For Respondents : Mr.S.Dhayalan

ORDER

The order of recovery dated 14.05.2015 to recover the excess payment of conveyance allowance already paid to the writ petitioner, is under challenge in the present writ petition.

2.The writ petitioner is a differently abled person and working as a Helper in the Tamil Nadu Electricity Board.

3.The learned counsel for the petitioner states that the writ petitioner was paid conveyance allowance, as per the Board proceedings in force. The learned counsel further states that there was no irregularity or infirmity in respect of the disbursement of conveyance allowance to the writ petitioner with reference to the rules in force. However, based on the erroneous audit objection, the impugned order of recovery was passed in Audit Slip No.25 dated 14.05.2015. Thus, the writ petitioner is constrained to move the present writ petition.

3.The learned counsel appearing on behalf of the respondents states that the impugned order of recovery was issued based on the audit objection and therefore, there is no infirmity as such.

4.It is brought to the notice of this Court that the respondents who filed the counter affidavit categorically admitted that the writ petitioner is eligible to avail benefits of conveyance allowance as applicable to him. The relevant portion of the counter in Paragraph Nos.4 and 5 are extracted hereunder:

> *"4........... Accordingly, as on dated of 03.08.2009, the writ petitioner also attended and confirmed his disability on considering 50% of his disability, he was paid Rs.1,000/- as conveyance allowance from 01.06.2011 onwards. It is admittedly says that as per the provisions of the disabilities Act 38(1)(a) of the Persons with Disabilities Act of 1995, any person who is physically challenged according to the percentage certified by the Medical Authority, who is entitled to get conveyance allowance, on considering the very same, till the first respondent conducted a proper audit, the writ petitioner was paid the conveyance allowance from the date of his appointment.*
>
> *5.It is further submitted that it is pertinent to mentioned here that mere confirmation of the disability certificate alone is not sufficient for getting conveyance allowance, the Writ Petitioner should obtain prior permission and recommendations of the medical authority from the Respondents Board through proper application and approval. Thereafter, the Writ Petitioner physically challenged is entitled to receive the conveyance allowance. The above named writ petitioner did not obtain any prior permission and recommendations of the medical authority from the Respondents Board through proper channel in respect of the disability for getting conveyance allowance."*

5.Even in case of ineligibility, if at all such allowances are already paid to the employee, the same cannot be recovered. The writ petitioner is working as clause IV employee and the excess amount if paid by mistake or by an administrative error, the same cannot be recovered, after a lapse of time or based on the audit objection. The legal principles in this regard, are settled by the Supreme

Court of India, in the case of ***State of Punjab v. Rafiq Masih*** reported in ***(2015)4 SCC 334***, the relevant paragraph No.18 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 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

6.In respect of the excess salary or payment made to the Clause IV employee, the same cannot be recovered, based on the audit report. However, the eligible payment or the mistakes if any, can be corrected. The allowances payable to the writ petitioner is to be sanctioned strictly in accordance with the pay rule as well as the rules applicable for grant of allowances. Thus, the payment of conveyance allowances or other eligible allowances sought to be regulated by the competent authority with reference to the rules in force. However, the excess amount paid already cannot be recovered. However, the learned counsel for the writ petitioner emphatically contended that the allowance paid to the writ petitioner was not an excess payment at all.

7.This apart, the counter statement also admits the fact that the writ petitioner is eligible for conveyance allowances. Under these circumstances, the following orders are passed:

(i)The impugned order passed by the first respondent in audit slip No.25, TANGEDCO Ltd., dated 14.05.2015 is quashed.

(ii)The respondents are directed to regulate the sanction and disbursement of conveyance allowance as applicable to the writ petitioner in accordance with the rules in force.

(iii)Accordingly, this writ petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Assistant Audit Officer,
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+1 CC to M/s.T.ARUL, Advocate SR-68795.

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CS: (08/07/2019) 4P 5C