



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2020

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.11701 of 2011

and

M.P (MD)No.1 of 2011

P.Selvendran

... Petitioner

vs.

1)The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai,
Chennai-2.

2)The Executive Engineer,
Tamil Nadu Electricity & Distribution Circle,
Operation & Maintenance (East),
Mannarpuram,
Trichy-20.

3)The Registrar,
Annamalai University,
Annamalai Nagar,
Chithambaram.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the 2nd respondent in Ku.Aa.No.226/Ni.Pi/U.1/Ko. Court case/2011 dated 03.09.2011 and quash the same and further directing the respondents 1 and 2 to continue to pay the incentive increments.

For Petitioner	: Mr.S.Satheeshkumar for Mr.H.Arumugam
For R1 & R2	: Mr.T.Sakthi Kumaran
For R3	: Mr.R.Karthickraja for M/s.Ajmal Associates

ORDER

The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the 2nd respondent in Ku.Aa.No.226/Ni.Pi/U.1/Ko. Court case/2011 dated 03.09.2011 and quash the same and further directing the respondents 1 and 2 to continue to pay the incentive increments.



2.Learned counsel for the petitioner would submit that the petitioner was appointed as Assessor in the Tamil Nadu Electricity Board on 18.11.1985 and he got B.A. degree in English in 2000 and subsequently did B.Com degree in the 3rd respondent University in 2005. He was granted one incentive increment of Rs.130/- from 04.12.2006 on account of having passed B.Com degree as per B.P.M.S.No.750 dated 30.04.1979. The 3rd respondent offered one year B.Com degree as double degree for persons who have already got under graduation degree and the petitioner completed the said one year B.Com degree and was granted one incentive increment from 2006. In 2009, by proceedings dated 27.08.2008 of the board, it was held that University of Madras has clarified that one year B.Com degree course conducted by the 3rd respondent under distance education mode is not equivalent to three years B.Com degree course offered by the Institute of Distance Education, University of Madras and such a degree cannot be considered for the relevant higher studies by the University of Madras.

3.He would further submit that on the basis of the said order, the 2nd respondent passed an order dated 02.03.2009 discontinuing the advance increment already sanctioned to the petitioner and re-fixed his scale of pay, against which, the petitioner filed W.P.No.2726/2010 and this Court by order dated 24.11.2010 allowed the said writ petition setting aside the above order dated 02.02.2009 on the ground that no show cause notice was issued to him and no explanation was sought from him. Thereafter, the 2nd respondent issued a show cause notice to the petitioner and the petitioner submitted his explanation on 28.03.2011. But, without properly considering the explanation of the petitioner, the 2nd respondent passed the impugned order dated 03.09.2011 discontinuing the advance increment and also ordered for recovery of the incentive increment already granted to a sum of Rs.15,800/- from the petitioner's salary in 10 equal instalments. According to the learned counsel, when the grant of alleged incentive increment was not due to the misrepresentation or fraud by the petitioner, recovery cannot be ordered and therefore, this Court at the admission stage, by order dated 12.10.2011, had granted interim stay while ordering notice of motion. Thus, he would pray for setting aside the impugned order.

4.The respondents have filed counter affidavit. Learned counsel appearing for the respondents 1 and 2 would state that earlier, it was presumed that one year B.Com degree course was equivalent to three years B.Com course and therefore, erroneously, one incentive increment was granted to the petitioner for the acquisition of one year B.Com degree course. But, later, it was found that the said one year B.Com degree course was not equivalent to three years B.Com degree course and therefore, the Board ordered that one year B.Com degree course shall not be taken into account for grant of incentive increment and also ordered for recovery from

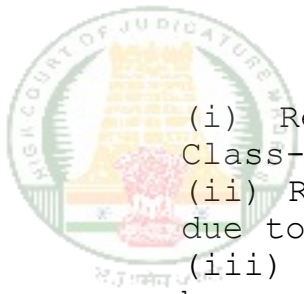


petitioner challenging the order dated 02.02.2009 discontinuing the incentive increment and refixing his scale of pay, this Court while setting aside the above order, granted liberty to the respondents to pass appropriate order after due notice to the petitioner complying with the principles of natural justice. Accordingly, after issuing show cause notice to the petitioner, recovery was rightly ordered in 10 equal instalments by impugned order. However, the petitioner filed the present writ petition and obtained interim stay and therefore, he would pray to vacate the interim order and to dismiss the writ petition.

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

6. Perusal of record shows that the University of Madras has clarified that one year B.Com degree course conducted by the 3rd respondent under distance education mode is not equivalent to three years B.Com degree course offered by the Institute of Distance Education, University of Madras and such a degree cannot be considered for the relevant higher studies by the University of Madras. Such a clarification was issued to all the Chief Engineers, Superintending Engineers of the board requesting to withhold sanctioning of advance incentive increment to the employees of the board for having acquired one year B.Com degree course. The present petitioner is the beneficiary of one year B.Com degree course and only due to the above clarification issued by the Public Information Officer of the University of Madras, without even notice to the petitioner, the incentive increment granted to the petitioner was stopped by order dated 02.02.2009, against which, the petitioner filed W.P.No.2726/2010 and this Court while setting aside the above order, has remanded the matter to the authority to pass fresh order after giving opportunity to the petitioner. Admittedly, as per the then prevailing rules, the incentive increment has been given to the petitioner for having passed one year B.Com degree course which was accepted at that point of time as equivalent to three years B.Com degree course and it has been clarified as not equivalent by a subsequent clarification as stated above. Therefore, it is not due to the fault of the petitioner, incentive increment was paid to him. The learned counsel for the respondents 1 and 2 attempted to sustain the impugned recovery order by relying upon paragraph 18 of the judgment reported in (2015) 4 SCC 334, State of Punjab vs, Rafiq Masih(White Washer) and others, wherein the Hon'ble Supreme 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be



- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from 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.But, the above judgment in my opinion is not applicable to the present facts and circumstances of this case. Here, the petitioner has been awarded with incentive increment at the time when one year B.Com degree course was considered to be a valid degree for payment of the incentive increment and it has been clarified by a subsequent proceedings as not equivalent. The petitioner has not at any point of time misrepresented for receiving the incentive increment and therefore, the respondents are not entitled to recover the amount already granted to the petitioner. Since subsequently it was clarified that one year B.Com degree is not equivalent to three years B.Com degree, the petitioner is not entitled for increment.

8.Accordingly, the impugned order passed by the 2nd respondent in Ku.Aa.No.226/Ni.Pi/U.1/Ko. Court case/2011 dated 03.09.2011, is quashed and the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

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/ /2020

Sub Assistant Registrar(CS)

To

+1cc to Mr.T.Sakthikumaran, Advocate, SR No.828

+1cc to M/s.Ajmal Associates, Advocate, SR No.647

W.P(MD)No.11701 of 2011

DATED : 07.01.2020

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