



WEB COPY

W.P.(MD) No.16544 of 2018
and W.P(MD).No.26478 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2020

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD) No.16544 of 2018
and W.M.P(MD).No.14630 of 2018
and W.P(MD).No.26478 of 2019

W.P.(MD) No.16544 of 2018

S.Sugumar Chellai

... Petitioner

/Vs./

The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tirunelveli.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order of respondent in Lr.No.45/Mea.Po/Ni.A/Sa.Pa.Pi/U.3/Ko.Pay anomaly/18 dated 20.06.2018 and quash the same.

W.P.(MD) No.26478 of 2019

S.Sugumar Chellai

... Petitioner

/Vs./

The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tirunelveli.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondent to pay the regular pension and disburse the retirement benefits with 12% interest within the time fixed by this Court.

In both petitions

For Petitioner : Mr.H.Arumugam

For Respondent : Mr.T.Sakthikumaran

Standing Counsel

COMMON ORDER

The petitioner herein, who was originally appointed in the Tamil Nadu Electricity Board on 04.08.1979 in the post of Tester
<https://hcservices.ecourts.gov.in/hcservices/>



Grade-II, was granted with periodical promotions and ultimately, he retired on 31.07.2017 in the cadre of Selection Grade Assistant Executive Engineer. The respondent herein had directed the petitioner to remit a sum of Rs.7,24,579/-. The pay fixation for a period between 05.07.1994 to 31.07.2017 has been wrongly made. Challenging the same, W.P(MD).No.16544 of 2018 has been filed.

2.Since the petitioner has already reached the age of superannuation and his regular pension as well as the retirement benefits were not disbursed to him, W.P(MD).No.26478 of 2019 has been filed seeking for issuance of a writ of mandamus to direct the respondent to pay the petitioner's regular pension as well as for disbursement of the retirement benefits together with interest.

3.The Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** reported in **(2015) 4 Supreme Court Cases 334** has spelt out the circumstances, in which, recovery from retired employees would be impermissible in law. One among circumstances laid down therein is that the 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 would also be impermissible. Apart from such a circumstances, the Hon'ble Apex Court had also held that when the Court arrives at a 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 recovery, such recovery also would be impermissible.

4.In the instant case, the audit objection citing wrong fixation of pay is for a period commencing from 05.07.1994 and for the mistake committed in the year 1994, the recovery which is sought to be made in 2018 would consequentially fall in the two among the circumstances referred to by the Hon'ble Apex Court in **White Washer** case, as such, the recovery order itself cannot be sustained.

5.The learned standing Counsel for the respondent would submit that though the circumstances spelt out in **White Washer** case would hold recovery orders impermissible, the fixation of the last drawn pay for the purpose of calculation of pension would be permissible. Since the petitioner herein has only questioned the legality of the recovery order and has also sought for issuance of mandamus on the ground that the respondent is not entitled to withhold the pension benefits as well as payment of the monthly pension, it would be appropriate to direct the respondent to consider his request on the basis of the representation.



6.Since the respondent is not entitled to seek for recovery of the amount raised in the audit objections, the petitioner would be entitled to the fixation of regular pension. It is now stated that the petitioner has now been paid the minimum pension. As such, this Court deems it fit to direct the respondent to consider the petitioner's request made in this regard in his representation dated 26.03.2019.

7.In the light of all the above observations, the impugned recovery order dated 20.06.2018 in Lr.No.45/Mea.Po/Ni.A/ Sa.Pa.Pi/ U.3/Ko.Pay anomaly/18 on the file of the respondent herein stands quashed. Consequently, there shall be a direction to the respondent herein to consider the petitioner's representation dated 26.03.2019 in the light of the observations made in this order and take further course of action atleast within a period of eight weeks from the date of receipt of a copy of this order.

8.These Writ Petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rmk

To

The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tirunelveli.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-6154[F] dated 13/02/2020)
+2CC TO MR.T.SAKTHI KUMARAN, Advocate Sr. No. 5875

Order made in
W.P.(MD) No.16544 of 2018
and W.M.P(MD).No.14630 of 2018
and W.P(MD).No.26478 of 2019
Dated:12.02.2020

SVN(CO)
TR(25.02.2020)3P 5C