

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.35372 of 2007

K.Narayanaswamy

...Petitioner

-Vs-

1. The Chief Engineer (Personnel)
Tamil Nadu Electricity Board
Anna Salai, Chennai 600 002.
2. The Superintending Engineer
VEDC/Villupuram Adm.1
Tamil Nadu Electricity Board
Villupuram District, Villupuram.
3. The Executive Engineer O&M
Tamil Nadu Electricity Board,
Tindivanam, Tindivanam - 604 001.

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the Third Respondent culminated in the impugned Memo No. 676/EE/ O & M/ TDM/Ni.U.A./Nimo/Nee.2/Ka/K/AA/07 dated 24.10.2007 of the third respondent and quash the same.

For Petitioner : Mr.Sivam Sivanandaraj

For Respondents: Mr.Fakkir Mohideen
Standing Counsel

O R D E R

The prayer sought for herein is to to call for the records of the Third Respondent culminated in the impugned Memo No. 676/EE/ O & M/ TDM/Ni.U.A./Nimo/Nee.2/Ka/K/AA/07 dated 24.10.2007 of the third respondent.

2. The petitioner was an employee of the respondent Tamil Nadu Electricity Board, against whom an order of recovery has been made by the impugned order dated 24.10.2007. In the said order, alleging that excess pay has been paid between the period 03.06.1992 to 30.06.2007, a sum of Rs.24,183/- was sought to be

recovered. As against the said order, the present writ petition has been filed.

3. Though arguments and counter arguments have been made by both sides with regard to the sustainability and non-sustainability of the recovery, this Court feels that, the situation now confronted in this case can fit in at least one of the four situations that are mentioned by the Honourable Supreme Court in the judgment reported in 2014 (8) S.C.C.833 "State of Punjab v. Rafiq Masih (White Washer)", wherein it was held as follows.

"12. 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 impermissible in law:

(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."

4. Insofar as the present case is concerned, the recovery is sought for the amount which was said to have been made as an excess payment allegedly for the period from 03.06.1992 to 30.06.2007.

5. In this context, it is to be noted that, after nearly about 15 years the impugned order has been passed seeking

recovery of the amount as if that has been paid excessively. The third situation that has been mentioned in the judgment of the Honourable Supreme Court reads that, 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, the employer is precluded from making any recovery. Therefore, this Court feels that, the situation now confronted in the present case can very well fit in the third situation mentioned by the Honourable Supreme Court. Therefore, the respondents herein are not entitled to claim the amount from the petitioner. Therefore, on that ground itself, the impugned order is not sustainable and accordingly the same is liable to be quashed.

6. In the result, the impugned order dated 24.10.2007 is hereby quashed. Consequently, the recovery sought for to the extent of Rs.24,183/- which was admittedly recovered already from the petitioner, as the petitioner was working till 2013 till he attained superannuation, shall be refunded to the petitioner with nominal interest of 6% per annum from the date it was recovered. With the above directions, this writ petition is allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

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To

Sub Assistant Registrar

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Tamil Nadu Electricity Board
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2. The Superintending Engineer
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Tamil Nadu Electricity Board
Villupuram District, Villupuram.
3. The Executive Engineer O&M
Tamil Nadu Electricity Board,
Tindivanam, Tindivanam - 604 001.

+1cc to Mr.V.Sivamsivananraj, Advocate, S.R.No.5183

W.P.No.35372 of 2007

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