



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.31500 of 2004
and WMP.No.38184 of 2004

The Superintending Engineer,
Tirupattur Electricity Distribution Circle,
Tamil Nadu Electricity Board/Tirupattur,
Vellore District.

...Petitioner

Vs.

1.S.Abdul Salam
2.The Presiding Officer,
Labour Court, Vellore.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the second respondent relating to his order dated 05.07.2004 passed in C.P.No.348/2003 and to quash the same as illegal and without jurisdiction.

For Petitioner : Mr.P.Subramanian

For Respondent-1 : No Appearance

O R D E R

The present Writ Petition is heard through Video Conferencing on 06.09.2021.

2. The wages of Rs.2000/- fixed by the petitioner's Corporation to the first respondent herein in the year 1988 is claimed, to have been excessively paid and hence, through an order dated 05.06.1993, the petitioner's Corporation had sought for recovery of Rs.4,390/- from the first respondent herein. According to the petitioner's Corporation, the first respondent's pay ought to have been fixed at Rs.1,940/- only, which aspect was detected by the Audit Department. The Labour Court, Vellore in the Computation Petition No.348 of 2003, had, in its order dated 05.07.2004, directed for refund of the sum of Rs.4,390/- on the ground that recovery of this excess payment after three years, is unjustifiable.



3. It is not in dispute that the alleged excess payment was made to the first respondent owing to the fault of the petitioner's- Corporation and this mistake was realized from the later audit objections. In other words, the first respondent was neither aware of the excess payment given to him nor was he in any way responsible for receiving the excess payment.

4. The legal position with regard to the employer's right to recover excess payment came up for consideration in various decisions of the Hon'ble Supreme Court. In Sham Babu Verma Vs. Union of India reported in 1994 (2) SCC 521, it was held that when the employees were paid excess salary due to no fault of theirs, it shall only be just and proper not to recover any excess amount which has already been paid to them. Likewise, in Sahib Ram Vs. Union of India reported in 1995 Suppl (1) SCC 18, it was held that when the higher pay scale is given to the employee not on account of any misrepresentation made by him but by wrong construction made by the employer, the employee cannot be held to be at fault and accordingly, the recovery of the excess payment was quashed. In consideration of the aforesaid decisions, the Hon'ble Supreme Court in the State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in 2015 (4) SCC 334, had summarized a few situations wherein recoveries by the employers were held to be impermissible in law. One such situation was in connection with recovery from the employees belonging to Class III and Class IV (Group C & Group D). An overall perusal of the aforesaid legal position, the very fact that the petitioner's Corporation had sought for recovery of the excess payment from Class IV employee itself is unsustainable and impermissible in law, particularly, when the fault of disbursing the alleged excess payment was not on the first respondent. Hence, all subsequent actions initiated by the petitioner's Corporation, pursuant to the Audit Objections, cannot be sustained. In this background, the award of the Labour Court cannot be found fault with, since the reason assigned in the award touches upon the lack of authority of the petitioner's Corporation to make a claim for recovery after three years of the alleged excess payment.

5. It is rather disappointing that the petitioner's Corporation has chosen to challenge the impugned award of the Labour Court, which orders for repayment of Rs.4,390/-, more particularly, when such an action for recovery was illegal. Since the petitioner's Corporation had unnecessarily dragged the first respondent to defend the present Writ Petition before this Court, serious prejudice would have been caused to such a workman. In this background, this Court is of the view that the petitioner's Corporation could be imposed with payment of costs.



6. In the result, the Writ Petition stands dismissed with a direction to the petitioner's Corporation to pay a sum of Rs.4,390/- together with interest at the rate of 12% from 05.07.2004 onwards along with costs to the tune of Rs.50,000/- to the first respondent. After such payment, the petitioner Corporation will be at liberty to withdraw a sum of Rs.4,390/-, claimed to have been deposited by them before the Labour Court, Vellore. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

1. The Presiding Officer,
Labour Court, Vellore.
2. The Superintending Engineer,
Tirupattur Electricity Distribution Circle,
Tamil Nadu Electricity Board/Tirupattur,
Vellore District.

+1cc to Mr.P.Subramanian, Advocate, S.R.No.44765

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PCH[co]
NSK 28/09/2021