



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)Nos.1995 and 21083 of 2021

and

W.M.P. (MD)No.1696, 1697, 7799 and 17678 of 2021

C.Kuppu

... Petitioner in both W.Ps.

versus

1. The Deputy Chief Internal
Audit Officer (Pension),
Audit Branch, TANGEDCO,
1st Floor, N.P.K.R.R. Maligai,
No.144, Anna Salai,
Chennai - 600 002.

2. The Superintending Engineer/Metro,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
Tamil Nadu Electricity Board,
Mannarpuram, Trichy.

... Respondents in both W.Ps.

Prayer in W.P. (MD)No.1995 of 2021: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of recovery without notice in Letter No.39510/1588/F42/2020 dated 29.12.2020 on the file of the respondent No.1 addressed to the respondent No.2 and quash the same as illegal and consequently, to direct the respondents to sanction and disburse the regular monthly pension within the time stipulated by this Court.

Prayer in W.P. (MD)No.21083 of 2021: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the records pertaining to the impugned order of revision of pay without notice in Memo No.1732/Adm.1.A.1/F. Revised pay fix (Retd) 2020, dated 07.11.2020 on the file of the respondent No.2 and quash the same as illegal.

For Petitioner
in both W.Ps. : Mr.S.Louis

For Respondents
in both W.Ps. : Mr.T.Sakthi Kumaran
Standing Counsel



COMMON ORDER

These writ petitions have been filed as against the order of recovery dated 29.12.2020 passed by the first respondent and the order of revision of pay dated 07.11.2020 passed by the second respondent.

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2. The petitioner, who worked as an Assistant Executive Engineer in the Tamil Nadu Electricity Board, retired from service on 30.04.2020.

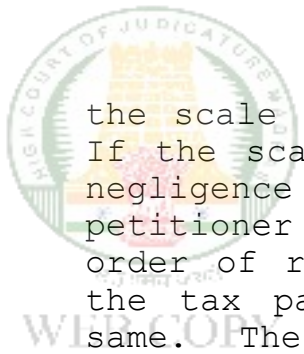
3. According to the learned counsel for the petitioner, the petitioner rendered 33 and half year service in the Board. He was not facing any departmental proceedings and therefore, he was allowed to retire from service on 30.04.2020 and he also received all retirement benefits. While sanctioning his pension proposal, the respondent Board, by referring an audit objection, vide order dated 07.11.2020, passed an order of revision of pay scale and also passed an order of recovery dated 29.12.2020. Therefore, these writ petitions are filed. According to him, as per the law laid down by 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 SCC 334, there cannot be any recovery after retirement.

4. Mr.Sakthikumaran, learned Standing Counsel appearing for TANGEDCO submits that the scale of pay for the petitioner was wrongly fixed by officer concerned and it was detected only during the audit. Based on the audit report, his scale of pay was revised and a notice was issued for recovery of the excess amount paid to him. He further submits that the petitioner does not come under either Group 'C' or 'D' category and therefore, he is not entitled for the above relief, as per the decision of the Hon'ble Apex Court in **Rafiq Masih (White Washer) 's** case.

5. This Court paid its anxious consideration to the rival submissions made.

6. The petitioner, who served as Assistant Executive Engineer in TANGEDCO, was allowed to retire from service on 30.04.2020. Thereafter, the respondents found the pay anomaly from the audit report that the pay has been fixed incorrectly from 01.01.2021. It was detected only at the time of calculating his pension proposal. Based on the audit report, the respondents revised the scale of pay and also passed the order of recovery. The scale of pay fixed in the year 2001 is revised after 20 long years and that too without any notice.

7. Though there is a delay, the same was detected only based on the audit report and that too while calculating the pension on the petitioner's pension proposal. The petitioner is entitled for



the scale of pay for his cadre of service and not more than that. If the scale of pay is fixed incorrectly by an officer either on negligence or collusion, the same cannot be granted to the petitioner as a matter of right in view of the delay in passing the order of revision. Every paise paid to the Government Servant is the tax payers' money and the Government is accountable for the same. The petitioner is entitled what he is legally entitled for. However, the scale of pay is revised after 20 long years and that too based on the audit report. In all fairness, the respondents ought to have provided an opportunity to the petitioner to afford his explanation based on the audit report.

8. Admittedly, in this case, no such opportunity was provided to the petitioner. Therefore, the writ petition in W.P.(MD)No.21083 of 2021 is allowed with liberty to the respondents to issue notice to the petitioner along with a copy of the audit objection, provide him an opportunity of hearing and thereafter, take a decision on the revision of scale of pay as early as possible.

9. With regard to the order of recovery dated 29.12.2020, the same was issued after eight months from the date of his retirement on 30.04.2020. Though the petitioner is not an employee under class 'C' or 'D', there shall not be any recovery pursuant to the decision of the Hon'ble Apex Court in **Rafiq Masih (White Washer)'s** case. The relevant portion 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:

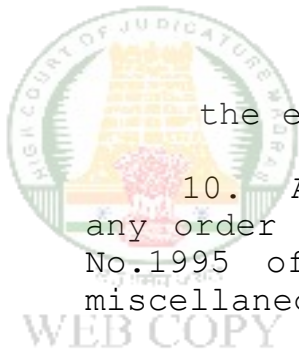
(i) Recovery from the employees belonging to Class III and Class IV service (for Group C and Group D Service).

(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 be iniquitous or harsh or arbitrary to such an



the employer's right to recover."

10. As per clause (ii) and (iii) cited above, there cannot be any order of recovery. Accordingly, the writ petition in W.P.(MD) No.1995 of 2021 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Writs)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Deputy Chief Internal
Audit Officer (Pension),
Audit Branch,
TANGEDCO,
1st Floor, N.P.K.R.R. Maligai,
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2. The Superintending Engineer/Metro,
Tamil Nadu Generation and Distribution
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Tamil Nadu Electricity Board,
Mannarpuram, Trichy.

+1 CC to M/s.S.LOUIS, Advocate (SR-38765[F] dated 15/12/2021)

+1 CC to M/s.T.SAKTHIKUMARAN, Advocate (SR-38770[F] dated 15/12/2021)

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NSN(CO)

TR(23.02.2022) 4P 5C