



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.13943 of 2021

and

WMP (MD) Nos.10888 and 10889 of 2021

WEB COPY

A. Puvaneswaran

... Petitioner

Vs.

1. The Chief Internal Audit Officer,
Audit Section,
TANGEDCO,
No. 144, Annasalai, 1st Floor,
Chennai -2.

2. The Superintending Engineer,
Ramanathapuram Distribution Circle (TANGEDCO),
Ramanathapuram,
Ramanathapuram District.

3. The Executive Engineer,
TANGEDCO Distribution,
TANGEDCO,
Paramakudi,
Ramanathapuram District.

4. The Assistant Engineer,
TANGEDCO Distribution,
Town Kamuthi,
Ramanathapuram District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the third respondent in Memo.NO.EE/D/PMK/AAdo/Adms/A.1/F.Payfix/D.No.1039/2021 dated 07.07.2021 and the proceedings in கு.எண்.செ.பொ/வி/பரம/உநிஅ/நிமே/உ.1/கோ.ஊ.பொ/அ/எண் 1162/2021 dated 17.07.2021 and quash the same.

For Petitioner : Mr. P. Gunasekaran
For Respondents : Mr.T. Sakthikumaran
Standing Counsel

O R D E R

The writ petition is filed for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the third respondent in Memo.NO.EE/D/PMK/AAdo/Adms/A.1/F.Payfix/D.No.1039/2021 dated 07.07.2021 and the proceedings in கு.எண்.செ.பொ/வி/பரம/உநிஅ/நிமே/உ.1/கோ.ஊ.பொ/அ/எண் 1162/2021 dated 17.07.2021 and quash the same.



2. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

3. The writ petitioner challenges the proceedings dated 07.07.2021 wherein the respondent corporation has revised and refixed the pay of the petitioner with effect from 1.12.2007. According to the petitioner, the aforesaid order passed by the respondent is without affording any opportunity to the petitioner, particularly when the petitioner had retired from service on 30.09.2020 and the instant impugned order was passed on 17.07.2021 after nearly a period of ten months for recovering the said difference amount already paid, pursuant to the revision of pay. According to the learned counsel for the petitioner, the said recovery is not permissible in law in the light of decision of the Hon'ble Supreme Court in the case of **"State of Punjab vs Rafiq Masih (White Washer) reported in (2015) 4 SCC 334"** The relevant paragraphs of the judgment are extracted hereinbelow:

"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:20

(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.



13. We are informed by the learned counsel representing the appellant-State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above."

In view of the above judgment, the impugned revision order and the consequential recovery proceedings are liable to be quashed.

4. The learned Standing Counsel appearing for the respondents has submitted that the third respondent has passed the order considering the fact that the respondents have paid wages to the petitioner in excess and therefore the respondents have to revise and refix the pay of the petitioner and pass the present orders.

5. On perusal of the impugned order, it is seen that the third respondent has not afforded any opportunity to the petitioner before passing the refixation of pay of the petitioner. Insofar as the proceedings relating to the recovery of amount already paid to the petitioner is concerned, it is seen that the present impugned order was passed on 17.07.2021 after a delay of more than ten months. As the recovery order has been passed by the third respondent after the retirement of the petitioner, without affording an opportunity to the petitioner, the dictum laid down in the judgment of the Hon'ble Supreme Court in the case of **"State of Punjab vs Rafiq Masih (White Washer) reported in (2015) 4 SCC 334"** squarely applies to the facts of this case. Therefore, the respondent cannot initiate any action for recovery of the amount if already paid to the petitioner. Insofar as the order of revision and refixation is concerned, it is for the respondent to proceed in accordance with law after providing opportunity to the petitioner.

6. In the light of the above, the impugned order is quashed and liberty is granted to the respondent to proceed in accordance with law, insofar as revision of pay is concerned. The Writ Petition is allowed No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar(CS)



To

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+1 CC to M/s.T.SAKTHIKUMARAN, Advocate (SR-29187[F] dated
15/09/2021)

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MGJ(08.10.2021) 4P 6C