



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.7913 of 2011
and
M.P.No.1 of 2011

M.Gangadharan

...Petitioner

-Vs-

1.The Internal Audit Officer (Pension),
Tamil Nadu Electricity Board,
Audit Branch, No.144, Anna Salai,
Chennai - 2.

2.The Superintending Engineer,
Tiruvannamalai Electricity
Distribution Circle,
Tiruvannamalai - 4.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Ka.No.062116/P.955/F.9/F93/2011, dated 07.02.2011 and quash the same and consequentially direct the respondents to pay the pension and disburse the retirement benefits as calculated the service of the petitioner for total period of 26 years 10 months.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.P.Subramanian

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein, while serving as a Revenue Supervisor, retired from the services on 31.05.2009. After his retirement, all the retirement benefits, including the pension, were extended to him. In this background, the first respondent had passed the impugned order dated 07.02.2011, stating that the petitioner's total service period has been wrongly calculated as



26 years and 10 months, instead of 25 years and 6 months, since his period of temporary service was also included. In this background, the respondent had sought for recovery of a sum of Rs.53,126/- in instalments. Challenging the said order, the present writ petition has been filed.

3. The Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih (White Washer) (2015) 4 SCC 334, has categorically held that recovery from retired employees, particularly when the mistake of excess payment was on the part of the employer, is impermissible in law. The relevant portion of the order reads as follows:-

"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 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. The aforesaid extract is self explanatory. Since the petitioner herein is a retired employee and the recovery from the pension of a retired employee is impermissible in law, in view of the aforesaid decision in White Washer's case (supra), the present impugned order cannot be sustained.

5. In the light of the above observations, the impugned order passed by the first respondent dated 07.02.2011 is quashed. In case the respondents have already recovered any amount in connection with the present impugned order dated 07.02.2011, they shall forthwith refund the same to the petitioner herein, within a period of four (4) weeks from the date of receipt of a copy of this order.

6. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

hvk

To

1.The Internal Audit Officer (Pension),
Tamil Nadu Electricity Board,
Audit Branch, No.144, Anna Salai,
Chennai - 2.

2.The Superintending Engineer,
Tiruvannamalai Electricity
Distribution Circle,
Tiruvannamalai - 4.

+1cc to Mr.P.Subramanian, Advocate SR.No.10132

W.P.No.7913 of 2011
and
M.P.No.1 of 2011

PCH (CO)
GMY (07/03/2022)