IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.7917 of 2011

V.Alagarasan ...Petitioner

-Vs-

1.The Chief Engineer (Personnel),
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai - 600 002.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Salem Electricity Distribution Circle,
Salem - 636 014.

3.The Assistant Accounts Officer,
Audit Party No.1 Office Audit Branch/TNEB,
Erode Region, Erode.

4.Assistant Executive Engineer (O&M),
Tamil Nadu Electricity Board,
Pethanaickenpalayam,
Attur Taluk, Salem District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, by calling the records of the 2nd respondent pertaining to his Memo No.029/AdmI/A3/F.Audit/10 dated 07.01.2011 confirming the order of the 1st respondent made in Memo No.138269/644/G.12/G.122/2007 dated 17.12.2007 and the order of the 3rd respondent dated 23.11.2006, which has been communicated by the 4th respondent on 18.11.2010 and to quash the same and consequently direct the respondents to repay the amount of Rs.13,447/- recovered from the petitioner.

For Petitioner : Mr.T.Sellapandian

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 an Assistant Executive Engineer, had passed the Account Test on 28.05.2003. Based on that, he was sanctioned with two increments. It is claimed that there were audit objections with regard to these increments being paid and the respondents herein had recovered a sum of Rs.13,447/- on 23.11.2006, claiming as excess payment, based on the audit objections.

3. Admittedly, there was no prior show cause notice putting the petitioner on notice and calling for objections. In the mean time, the respondents had initiated departmental action against the petitioner, whereby an enquiry was conducted and the Enquiry Officer had held the charge against him as "not proved". However, the respondents deferred from the findings of the Enquiry Officer and imposed a punishment of stoppage of increment for a period of 1 year with cumulative effect, on 30.01.2010. The appeal against the punishment was rejected on 25.03.2010. Thereafter, the petitioner had preferred a writ petition in W.P.No.12073 of 2010 and by order dated 21.07.2010, this Court had set aside the punishment on the ground that, when the Disciplinary Authority chose to defer from the findings of the Enquiry Officer, no show cause notice was issued to the petitioner and there was no reasoning given for deferring with such views. However, it was observed in the said order that if the respondent still feels that there are reasons to differ from the findings of the Enquiry Officer, he may communicate the reasons in the form of a show cause notice to the petitioner, calling for objections and thereafter pass final orders.

4. In the present impugned order, this procedure was again not adopted and the respondents had straightaway chose to revise the earlier punishment into postponement of next annual increment for 1 year with cumulative effect, through the impugned order dated 07.01.2011. In this impugned order, the respondents have also clubbed the wage revision with effect from 01.12.2002 mentioned earlier and had stated that the revision and re-fixation was made by treating the wage revision option exercised already by the petitioner as an invalid option with effect from 29.05.2003.

5. The impugned order cannot be sustained mainly on the ground of violation of principles of natural justice. When the original revision and re-fixation of the petitioner's wages were made, he was not put on prior notice and his objections were

never considered. Merely because there were some audit objections, it does not mean that the respondents are at liberty to straightaway and unilaterally recover the alleged excess payment pointed out by the audit department. The petitioner would have a right to give his explanations or objections to the proposed recovery and in the absence of any show cause notice being issued in this regard, the very action of revision and re-fixation and the consequential recovery, cannot be sustained.

6. Insofar as the punishment is concerned, this Court had earlier quashed the original punishment and granted liberty to the respondents to proceed with the departmental action, if they choose to do so, after giving prior notice to the petitioner, with regard to the reasons for proposing to differ with the findings of the Enquiry Officer. In this background, the respondents had, however, taken the original punishment into account and revised the same into another punishment, without issuing a show cause notice.

7. When the original punishment itself has been set aside by this Court, I am unable to understand as to how the original punishment can be modified into another punishment. This apart, this Court granted liberty to the respondent to issue show cause notice before taking any final decision. Admittedly, this procedure was also not adopted. Above all, this Court is unable to understand as to how the respondents had clubbed both the recovery based on the audit objections and imposing of the punishment in one single order, which is impugned in this writ petition. Both these actions have no nexus with each other. Thus, I do not find any justification in the action initiated through the impugned proceedings dated 07.01.2011.

8. In the light of the above observations, the impugned order passed by the 2nd respondent dated 07.01.2011, confirming the order of the 1st respondent dated 17.12.2007 and the order of the 3rd respondent dated 23.11.2006, which has been communicated by the 4th respondent on 18.11.2010, are quashed. Consequently, there shall be a direction to the respondents to repay the amount of Rs.13,447/- recovered from the petitioner herein, within a period of four (4) weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

hvk

To

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Pethanaickenpalayam,
Attur Taluk, Salem District.

+1cc to Mr.P.Subramanian, Advocate SR.No.11053

W.P.No.7917 of 2011

KG(CO)
GMY(08/03/2022)