



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-06-2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP NO.7716 OF 2014

AND

MP NO.1 OF 2014

M.Parthiban

...Petitioner

Vs.

1.The Superintending Engineer,
Thiruvannamalai Electricity Distribution Circle,
TANGEDCO,
Thiruvannamalai-4.

2.The Executive Engineer, (O&M),
Cheyyar,
Thiruvannamalai Electricity Distribution Circle,
TANGEDCO,
Thiruvannamalai-4.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in Memo No.EE/O&M/West/T.V.Malai/ADS/D.No.359.2/2013 dated 27.12.2013 on the file of the second respondent herein and quash the same and consequently directing he respondents herein to refix the pay as regular time of scale pay as per in (FB) TANGEDCO Proceedings No.11, dated 02.08.2011.

For Petitioner : Mr.M.Jayachandran

For Respondents : Mr.P.Subramanian,
Standing Counsel for TANGEDCO.

O R D E R

The order of recovery dated 27.12.2013 issued by the second respondent to recover the excess salary paid to the writ petitioner from 01.12.2006 to 31.05.2013, is under challenge in the present writ petition.



2. The writ petitioner is working as Sweeper in the office of the Executive Engineer Town/East/Tiruvannamalai District. The writ petitioner joined as a Part Time Sweeper in the office of the first respondent-Superintending Engineer on 01.03.2006. Initially a consolidated salary was paid to the writ petitioner and the same was enhanced periodically. Pursuant to the Board proceedings and based on the orders passed by the Courts, regular time scale of pay was granted to the writ petitioner from 2006 onwards.

3. The petitioner states that he is working as a Full Time employee as per the instructions of the first respondent. Subsequently, the writ petitioner was appointed in a regular establishment and his services were also regularised under the regular time scale of pay with effect from 04.04.2003.

4. In respect of the time scale of pay granted from the year 2006-2013, the respondents have issued the impugned order of recovery on the ground that there was an audit objection in respect of the time scale of pay granted to the writ petitioner and accordingly, the writ petitioner has to repay the excess amount of salary paid to him.

5. This Court is of the considered opinion that there was no misrepresentation or otherwise on the part of the writ petitioner, as he was not only appointed as Part Time Sweeper and subsequently, his services have been regularised with regular time scale of pay. The regular time scale of pay was granted to the petitioner during the relevant point of time based on certain Board proceedings or based on the orders of the Court. Even if the reduction in scale of pay was granted erroneously, such payment made long back, cannot be recovered after the lapse of many years. This apart, the petitioner is serving under Group-D category and in the event of imposing any recovery, the same would cause great hardship to the petitioner and he may not be in a position to pay the recovery amount of Rs.39,654/-.

6. The Courts have repeatedly held that in respect of the Class-IV employees in the event of excess payment and if such payment would cause hardship to the employees, then the same cannot be recovered.

7. This being the principles to be followed, this Court is of the considered opinion that the recovery of excess pay now made in the impugned order if recovered would cause hardship to the petitioner as he is working under the category of Sweeper.

8. Considering the facts and circumstances, the order impugned passed by the second respondent in Memo No.EE/O&M/



West/T.V.Malai/ADS/D.No.359.2/2013 dated 27.12.2013, is quashed in respect of recovery alone. The respondents are at liberty to fix the scale of pay of the writ petitioner as per the Pay Rules and the Board proceedings in force. However, it is made clear that there is no impediment for the Authorities Competent to fix the correct scale of pay as applicable to the writ petitioner as per the Pay Rules and Board proceedings in force.

9. With the abovesaid liberty, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

Svn

To

- 1.The Superintending Engineer,
Thiruvannamalai Electricity Distribution Circle,
TANGEDCO,
Thiruvannamalai-4.
- 2.The Executive Engineer, (O&M),
Cheyyar,
Thiruvannamalai Electricity Distribution Circle,
TANGEDCO,
Thiruvannamalai-4.

W.P.No.7716 of 2014

KK(CO)
RVM(20/06/2022)