



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.06.2022

CORAM:

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THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.2130 of 2014

S.Vijayakumari

... Petitioner

Vs

1. The Superintending Engineer,
Krishnagiri Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation,
Krishnagiri - 635 002.

2. The Superintending Engineer,
Dharmapuri Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation,
Dharmapuri.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records relating to the 1st respondent's orders made in Say.Mu.Aa.No.Ni.Pi3/Vu.2/O.817-3/2011 dated 11.02.2013 and the consequential order made in Ka.No.144/Ni.Pi.2/Vu.2/ Ko.Vi.Sivaprakasam/2013 dated 17.12.13 and to quash the same as without jurisdiction, illegal and violation of Principles of Natural Justice.

For Petitioner : Mr.G.Ananda Kumar

For Respondents: No appearance

O R D E R

The order of recovery dated 11.02.2013 and the consequential order dated 17.12.2013, issued by the respondents are sought to be quashed in the present writ petition.

2. The petitioner is a family pensioner. Her husband Mr.V.Sivapragasam, was an employee of TANGEDCO and died on 07.06.2008, while he was working as Inspector of Assessment. The husband of the writ petitioner served for 16 years 7 months and 16 days and accordingly, the writ petitioner is eligible for terminal/pensionary benefits and the family pension. The petitioner submitted an application and accordingly, all the benefits were settled in favour of the writ petitioner.



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3. While so, the respondents issued the impugned order of recovery by stating that an excess amount of Rs.1,26,811/- was paid to the writ petitioner and the said amount is to be recovered from her family pension. Thus, the petitioner is constrained to move the present writ petition.

4. The learned counsel for the petitioner mainly contended that no show cause notice or opportunity was provided to the writ petitioner. Further, even the calculation regarding the excess payment has not been provided in the impugned order. Thus, the unilateral decision taken by the respondents are untenable and the impugned order of recovery is to be set aside.

5. Perusal of the impugned order reveals that the respondents have not even provided the details regarding the fixation of pension, family pension and the excess payment, if any paid. In the absence of any details, the petitioner being the family pensioner may not be in a position to understand the nature of recovery or to verify the correctness of the fixation made by the respondents. The respondents are expected to pass speaking orders and in the event of any such excess payment, the details and the fixation made are to be clearly provided, enabling the aggrieved person to defend their case. In the present case, even the opportunity to defend the case was not provided to the writ petitioner. Thus, the impugned order is in violation of principles of natural justice.

6. The Courts have consistently held that even in case of excess payment to the family pensioner, the same cannot be recovered after lapse of years. In the event of any such recovery, it will result in hardship to such family pensioner and in the present case, the petitioner would be receiving a meagre amount of family pension and in the event of recovery of sum of Rs.1,26,811/-, the same would affect her normal family life and result in hardship. For all these reasons, the writ petition is to be considered.

7. That apart, the husband of the writ petitioner was working as Inspector of Assessment, which is a Class 'C' post. Therefore, recovery of excess payment cannot be made. Recovery of excess payment is permissible only when there is a misrepresentation on the side of the petitioner or an undertaking is given by the petitioner. In the present case, the petitioner is a family pensioner and she has not given any such undertaking and therefore, recovery cannot be made.

8. In view of the above said circumstances, the proceedings of the 1st respondent in Say.Mu.Aa.No.Ni.Pi3/Vu.2/O.817-3/2011



dated 11.02.2013 and the consequential order made in
Ka.No.144/Ni.Pi.2/Vu.2/ Ko.Vi.Sivaprakasam/2013 dated
17.12.2013, are quashed and the writ petition stands allowed.
No costs.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintending Engineer,
Krishnagiri Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation,
Krishnagiri - 635 002.

2. The Superintending Engineer,
Dharmapuri Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation,
Dharmapuri.

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