



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.2234 of 2014 and
M.P.No.1 of 2014

B.Anandhi

...Petitioner

Vs.

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

2.The Executive Engineer (O & M) / West
Thiruvannamalai Electricity Distribution Circle,
TANGIDCO, Thiruvannamalai - 4.

...Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus call for the records in Memo No.EE/O&M/WEST/T.V.Malai/ADS/D.No.3591/2013 dated 27.12.2013 on the file of the second respondent herein and quash the same and consequently direct the respondents herein to re-fix the petitioner's pay as per the proceedings of the first respondent.

For Petitioner : Mr.B.Manoharan

For Respondents : Mr.P.Subramanian,
Standing counsel

ORDER

The case of the petitioner is that she is working as a Sweeper in the office of the Assistant Engineer (O&M) / North, Thiruvannamalai from the year 2000. She was brought into time scale pay vide proceedings dated 29.09.2011 w.e.f., 01.04.2006. The petitioner was brought into time scale of pay in pursuance of directions of this Court in W.P.No.10777 of 2003 confirmed by the Hon'ble Supreme Court of India in C.A.No.9438 of 2010.

2. While the matters stood thus, by proceedings dated 27.12.2013 her pay was sought to be re-fixed on the basis of certain audit objection. As a consequence of the re-fixation of



the pay, the recovery was also ordered for the excess payment made during the relevant period. Challenging the proceedings of the second respondent dated 27.12.2013, the present writ petition is filed.

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3. Mr.B.Manoharan, the learned counsel who appeared for the petitioner would submit that there was no notice issued before the impugned recovery order was passed. According to him that it was not the fault of the petitioner that some excess payment appeared to have been paid to the petitioner and she was not aware of the basis of the audit objections in that regard. In any event, the learned counsel would submit that the petitioner being a Sweeper belonging to the lowest cadre service, any excess payment made cannot sought to be recovered in view of the decision of the Hon'ble Supreme Court of India and also various decisions rendered by this Court following that case.

4. The excess payment is sought to be recovered is to the tune of Rs.39,700/- and the same was sought to be recovered in 79 installments with Rs.500/- every month. According to the learned counsel, she was hardly getting about Rs.1,000/- as consolidated pay and therefore monthly recovery ordered is extremely unjust, arbitrary and also inequitable.

5. Mr.P.Subramanian, learned Standing Counsel appeared for the respondents would submit that her pay has been revised and as the audit pointed out the wrong fixation, the consequential recovery was ordered.

6. This Court is unable to countenance the opposition to challenge this Writ Petition. First of all, the petitioner belongs to the lowest rank of public service and what was paid to her itself was a meagre consolidated amount. In such circumstances, there cannot be any recovery ordered even, in the event of she being paid excess amount wrongly. It was not the fault of the petitioner if any excess payment had been paid to her during the relevant period.

7. As rightly contended by the learned counsel for the petitioner, the issue is directly covered by a decision of the Hon'ble Supreme Court of India in the case of White Washer's and also a recent decision of the learned Single Judge of this Court in the case of M.Vishwanath Vs. The Director of Municipal Administration, Chepauk in W.P.No.1008 of 2016 dated 28.06.2021 allowing the similar Writ Petition. Paragraphs 5 to 8 of the said order are extracted hereunder;

"5. A mere justification of the action of the second respondent, which was based on the first respondent's instructions, may not be sufficient to permit them to recover the alleged excess payment



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made. As rightly pointed out by the learned counsel for the petitioner, the Hon'ble Supreme Court in the White Washer's case, had summarised certain situations wherein, recoveries from Class IV employees and recoveries where the excess payments have been made for a period in excess of five years, were held as 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."

6. The Government had also chose it appropriate to abide by the orders of the Hon'ble Supreme Court in White Washer's case (supra) and consequently had issued G.O.Ms.No.286 dated 28.08.2018, reiterating the findings of the Hon'ble Apex Court, which has been extracted above.

7. In this background, I do not find any justification on the part of the second respondent in ordering for recovery of the alleged excess payment. In view of the decision laid down by the Hon'ble Apex



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Court in White Washer's case (supra) and the subsequent Government Order in G.O.Ms.No.286 dated 28.08.2018, the impugned order cannot be sustained.

8. In the result, the impugned letter issued by the first respondent dated 21.05.2015 and the impugned order passed by the second respondent dated 25.08.2015, are quashed and the writ petition stands allowed. In case, any excess payment has been recovered by the second respondent, there shall be a direction to the second respondent herein to forthwith refund the same to the petitioner, atleast within a period of six weeks from the date of receipt of a copy of this order. It is made clear that the impugned order, insofar as it relates to re-fixation of the pay is concerned, shall not be disturbed. No costs. Consequently, connected miscellaneous petitions are closed."

8. In view of the same, the impugned order stands quashed as illegal and unsustainable insofar as ordering recovery as a consequence of excess payment made to the petitioner and the Writ Petition stands allowed to the limited extent as above. No costs. Consequently, the connected miscellaneous petition is closed.

9. It is clarified that Writ Petition is allowed only to the extent of recovery. It is also clarified that the arguments on behalf of the petitioner are confined only to the aspect of recovery and not re-fixation per se.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

mrm

To

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

2.The Executive Engineer (O & M) / West
Thiruvannamalai Electricity Distribution Circle,
TANGIDCO, Thiruvannamalai - 4.

+1cc to Mr.Subramanian, Advocate, S.R.No.16955

W.P.No.2234 of 2014

MG(CO)
SB(28/03/2022)