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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 09.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. No.22591 of 2014

G.Kaarthikeyan

...Petitioner

Vs

1 The Managing Director
Tamil Nadu Minerals Limited
Chepauk, Chennai-5.

2 The Manager (P & A)
Tamil Nadu Minerals Limited
Chepauk, Chennai-5.

3 The General Manager (Finance)
Tamil Nadu Minerals Limited
Chepauk, Chennai-5.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for records relating to the 3rd respondent's proceedings in Na.Ka.No. 6835/E4/14 dated 04.08.2014 and the 2nd respondent's proceedings in Proc.No. 6835/E4/14 dated 11.08.2014 to quash the same and consequently direct the respondents to disburse the salary without any deduction and as had been fixed based on Government orders with Grade Pay at Rs.4200/- as had been fixed vide 2nd respondent's proceedings made in Se.Mu.A.No. 4185/E4/14 dated 21.04.2014 and of the 3rd respondent proceedings in Proc.No. 14613/E4/13 dated 14.05.2014 and to extend all benefits.

For Petitioner ... Mr.L.Chandrakumar

For Respondents... Mrs.A.Srijayanthi,
for respondents 1 to 3

O R D E R

The petitioner's case is that he was appointed as electrician on 28.05.1998 and he has rendered 16 years of total



service at the time of filing of the writ petition. On completion of ten years of service, he was granted with the selection grade scale of pay and other attendant benefits arising thereto.

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2. In the year 2013, government order in G.O.Ms.No.240 Finance Department, dated 22.07.2013 was issued and options were called for from the Government servants and as per the option exercised by the petitioner herein, his pay was revised and re-fixed with grade pay with prospective effect. As a consequence of the re-fixation, the petitioner was granted all monetary benefits by proceedings dated 30.12.2013. His actual grade pay was revised to Rs.4,200/-, which according to the petitioner was a proper fixation as on 01.04.2014.

3. While the matter stood thus, by the impugned proceedings, his original fixation of pay had been revised and withdrawn resulting in considerable reduction in petitioner's monthly emoluments from the month of August, 2014. Aggrieved by the action of the respondents in revising the pay without even following the basic principles of natural justice of providing an opportunity of hearing, the petitioner is before this Court.

4. Notice was issued to the respondents and Mrs.A.Srijeyanthi, has entered appearance on their behalf. A detailed counter-affidavit has also been filed. In the counter-affidavit, reasons have clearly been set-forth in paragraph 6 of the counter-affidavit as to the basis for effecting revision of the pay fixation of the petitioner. In view of the downgrading of the pay revision in terms of the petitioner's entitlement, the consequent excess payment had to be recovered from him and therefore, the impugned proceedings were issued.

5. At this, the learned counsel for the petitioner would submit that as far as the recovery aspect alone is concerned, this Court may follow the principles laid down by the Supreme Court in the case of State of Punjab and others vs. Rafiq Masih (White Washer) etc.(2015) 4 SCC 334. In that case, the Supreme Court has held that in the case of any excess payment made to any Government servant and in the absence of any misrepresentation from his side, such excess payment need not be recovered, particularly with reference to Class-III and Class-IV Government servants. The learned counsel would submit that the recovery alone may be interfered with.

6. This Court in consideration of the submissions of the learned counsel for the petitioner confining his challenge only to the recovery portion alone, is of the view that the Supreme Court has clearly held that in matters of this nature, the excess payment need not be recovered. The facts herein would



also disclose the fact that the petitioner was not to be attributed with any misrepresentation on his side when original fixation has been done. It was an administrative error having provided him with a higher fixation of pay, which was subsequently realized and re-fixed.

7. In the said circumstances, the Supreme Court has laid down the following principles:

"12. 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."

8. In view of the categorical pronouncement of law and the legal principle which is the law of the land, this Court is bound by the principle.



9. In the said circumstances, the impugned notifications are set aside only insofar as they seek to recover the excess payment from the petitioner but not the re-fixation per se.

10. The writ petition is allowed to the extent indicated above. There will be no order as to costs. Consequently, M.P.Nos.1 and 2 of 2014 and W.M.P.No.8358 of 2021 are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Managing Director
Tamil Nadu Minerals Limited
Chepauk, Chennai-5.
- 2 The Manager (P & A)
Tamil Nadu Minerals Limited
Chepauk, Chennai-5.
- 3 The General Manager (Finance)
Tamil Nadu Minerals Limited
Chepauk, Chennai-5.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.8288

+1cc to M/s.A.Srijayanthi, Advocate, S.R.No.8606

W.P. No.22591 of 2014

SJ(CO)
RGA(07/03/2022)