



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.383 of 2014

S.Mani

...Petitioner

Vs.

1.The Chief Internal Audit Officer,
TANGEDCO,
144, Anna Salai, Chennai - 2.

2.The Chief Engineer (Personnel)
TANGIDCO,
144, Anna Salai, Chennai - 2.

3.The Superintending Engineer,
Thiruvanamalai Electricity Distribution Circle,
TANGIDCO, Thiruvanamalai.

4.The Executive Engineer (O & M)
Thiruvanamalai East TANGIDCO,
Vangikal, Thiruvanamalai.

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, call for the records in proceedings No.Aa.Ku.No.EE /O & M / East / Thiruvannamalai / Adm / U2/ Ko.Re-fixation of salary / 08 dated 14.7.2008 on the file of the 4th respondent herein and quash the same and consequently, direct the respondents herein to re-fix petitioner's pay and refund the amount recovered with interest consequently direct the respondents to re-fix petitioner's Pension.

For Petitioner : Mr.B.Manoharan

For Respondents : No appearance

ORDER

The order of recovery dated 14.07.2008 passed by the 4th respondent is sought to be assailed in this writ petition.



2. The petitioner joined as Cashier in the respondent Board and completed 36 years of service. The petitioner was retired from service on 30.06.2007 as Selection Grade Revenue Supervisor and he was allowed to retire from service.

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3. The learned counsel for the petitioner contended that the retirement benefits were already settled and the petitioner is continuing as a pensioner. While so, the impugned order has been passed in proceedings dated 14.07.2008, imposing recovery on the ground that there was an audit objection in respect of excess payment and no show cause notice or opportunity was provided to the petitioner even to defend his case.

4. It is also contended that the petitioner is a pensioner and the impugned order of recovery has been passed after retirement, more so, without a show cause notice and thus, the impugned order is liable to be set aside.

5. This Court is of the considered opinion that any order of recovery, affecting the rights of an employee is to be passed only after affording an opportunity to the employee concerned. In the present case, the impugned order of recovery was passed after retirement and therefore, the order impugned is in violation of the principles of natural justice. This apart, the Courts have consistently held that recovery of excess payment cannot be made more so from the retired employee. Such recovery would cause hardship to the pensioners and only in certain circumstances, if any employee has given an undertaking or in case of misrepresentation, such recovery is permissible, but not otherwise.

6. In the present case, the recovery has been imposed based on the audit objection. Even in such cases, where excess payment has been made, the same cannot be recovered by the competent authorities, more so, after the retirement of an employee. However, the mistakes if any crept in regarding the fixation or otherwise, shall be corrected and applicable scale of pay and pension is to be paid.

7. This being the principles to be followed, the error occurred in fixation of pay or pension is directed to be corrected and the corrected applicable pay and pension is to be fixed as far as the petitioner is concerned. But the excess payment already paid to the petitioner cannot be recovered.

8. In view of the facts and circumstances, the order impugned passed by the 4th respondent in proceedings No.Aa.Ku.No.EE/O&M/East/ Thiruvannamalai/Adm/U2/Ko.Re-fixation of salary/08 dated 14.07.2008 is quashed.



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9. Accordingly, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

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To

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+1cc to Mr.P.Subramanian, Advocate Sr.No.32140

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MT (CO)
RVM(21/06/2022)