



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.NO.17676 OF 2014

AND

M.P.NO.1 OF 2014

M.Yasothai

... Petitioner

Vs.

1. The Superintending Engineer,
Thiruvannamalai Electricity Distribution Circle,
TANGEDCO, Thiruvannamalai-4.
2. The Executive Engineer, (O&M)/, East
Thiruvannamalai Electricity Distribution Circle,
TANGEDCO, Thiruvannamalai-4.
3. The Junior Engineer,
Thiruvannamalai Electricity Distribution Circle,
TANGEDCO, Konalur, Thiruvannamalai-4.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records Koo No. E.Nee. Po/ E2/Konalur/ Koppu-2/CAO 268-2014-15 dated 05.04.2014 on the file of the 3rd respondent herein and quash the same and consequently directing the respondents herein to re-fix pay the proceedings of the 1st respondent.

For Petitioner : Mr.M.Jayachandran

For Respondents : Mr.P.Subramanian
[For TANGEDCO]



ORDER

The order of recovery dated 05.04.2014 issued based on the Audit Objection to recover the time scale of pay granted to the writ petitioner with effect from 2007 is under challenge in the present writ petition.

2. The writ petitioner is now working as part time conservancy worker in the time scale of pay with dearness allowance. The petitioner was initially appointed as part time conservancy worker in the year 2007. He was paid with consolidated pay/salary during the relevant point of time. The consolidated salary was increased periodically from time to time. The respondent / Board issued proceedings dated 29.09.2011, granting time scale of pay to part time conservancy workers. Consequently, the petitioner was also sanctioned with the time scale of pay with dearness allowance as per B.P.No.11 dated 02.08.2011. However, an audit objection was raised regarding the time scale of pay granted to the writ petitioner from his date of appointed i.e., from the year 2007 onwards till such time the B.P.No.11 was issued.

3. The learned counsel for the petitioner mainly contended that no notice was issued to the writ petitioner before issuing the order impugned. However, there is no misrepresentation or otherwise on the part of the writ petitioner. Even in case his salary was paid erroneously during the relevant point of time and in the event of recovering such a huge amount, the same will affect the normal life of the writ petitioner.

4. The learned Standing Counsel appearing on behalf of the respondents objected the said contentions by stating that part time conservancy workers during the relevant point of time was not eligible for the time scale of pay. They were initially appointed under consolidated pay/salary and the said salary was periodically increased, but the time scale of pay was erroneously granted to the writ petitioner. At that time the part time conservancy workers are eligible for time scale of pay with dearness allowance only based on the Board proceedings B.P.No.11 issued on 02.08.2011. Thus, based on the audit objection the excess salary paid to the petitioner from 2007 to 2011 is sought to be recovered.

5. Any order affecting the right of an employee is to be issued only after affording an opportunity to the employee to defend his case. In the present case, no show cause notice has



been issued. That apart, the petitioner is working as conservancy worker and there was no misrepresentation or otherwise on the part of the petitioner, while granting time scale of pay in the year 2007. The error was committed by the respondents / Establishment for which the petitioner cannot be penalized after a lapse of many years. When the establishment committed an error in granting excess payment to such employees, the recovery proceedings are to be initiated against the officials, who have erroneously granted the pay and who all are accountable.

6. Thus, in such circumstances, where there is no misrepresentation on the part of the employee concerned and if establishment has committed an error and granted excess pay and the said amount is to be recovered from the establishment officials, who all are responsible and such excess pay cannot be recovered from such conservancy workers after a lapse of many years, which would result in hardship and they may not be in a position to repay such huge amount from their salary.

7. Thus, the respondents are at liberty to initiate all appropriate actions under service rules in force against the officials, who have committed an error by fixing time scale of pay or granting excess pay to the writ petitioner during the relevant point of time. However, the said excess amount paid to the petitioner cannot be recovered. Accordingly, the order impugned passed by the 3rd respondent in proceedings Koo No. E.Nee. Po/ E2/Konalur/ Koppu-2/CAO 268-2014-15 dated 05.04.2014 is quashed.

8. With this liberty, the Writ Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jeni/Ab



To

1. The Superintending Engineer,
Thiruvannamalai Electricity Distribution Circle,
TANGEDCO, Thiruvannamalai-4.
2. The Executive Engineer, (O&M)/, East
Thiruvannamalai Electricity Distribution Circle,
TANGEDCO, Thiruvannamalai-4.
3. The Junior Engineer,
Thiruvannamalai Electricity Distribution Circle,
TANGEDCO, Konalur, Thiruvannamalai-4.

+1cc to Mr.P.M.Jayachandran, Advocate, S.R.No.36565
+1cc to Mr.P.Subramanian , Advocate, S.R.No.36729

W.P.No.17676 of 2014

RGN(CO)
PM/29/06/2022