

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.06.2023

Pronounced on : 22.08.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.11552 of 2011

and

M.P. No.1 of 2011

C.Murugan

... Petitioner

Vs.

- 1.The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Maintenance Division, Thiruvannamalai.
- 2.The Joint Chief Engineer (General),
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Salai, Chepauk,
Chennai-600 005.
- 3.The Superintending Engineer,
Tamil Nadu Water Supply and Drainage Board,
Vellore and Thiruvannamalai Circle,
2, 14th East Cross Road,
Gandhi Nagar, Vellore- 632 006.
- 4.The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai,
Chepauk, Chennai-600 005.

... 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 connected with the impugned orders dated 20.06.2008 vide Proc.No.2596/EA 2/2008 passed by the first Respondent and consequent orders dated 25.06.2008 vide Lr.No.P3/23603/Pen/HO/2008-4 passed by the second Respondent and quash the same and further direct the first and second Respondents to refund the amount of Rs.1,17,047/- illegally recovered from the petitioner with interest at 12% per annum for the belated payment of Death Cum Retirement Gratuity as per the Tamil Nadu Pension Rules from 01.07.2008 onwards.

For Petitioner : Mr.G.P.Arivuchudar

For Respondents : Mr.S.Ravindran
Senior Advocate
for M/s.S.Mekhala

ORDER

The writ petition has been filed challenging the proceedings dated 20.06.2008 vide Proc.No.2596/EA 2/2008 passed by the first respondent and consequent orders dated 25.06.2005 vide Lr.No.P3/23603/Pen/HO/2008-4 passed by the 2nd Respondent and quash the same and further direct the 1st and 2nd Respondents to refund the amount of Rs.1,17,047/- illegally recovered from the petitioner with interest at 12% per annum for the belated payment of Death Cum Retirement Gratuity as per the Tamil Nadu Pension Rules from 01.07.2008 onwards.

2. The petitioner was initially appointed as an Electrician in Tamil Nadu Water Supply and Drainage Board and joined duty on 19.08.1974 and was regularized on 01.01.1980. The petitioner moved to the Selection Grade Scale of Pay 950-20-1150-25-1500 for the post of Electrician Grade-II on 01.01.1990. After completion of 10 years of service, he was re-designated as Electrician Grade-I in the Scale of Pay 5000-150-8000 from 01.01.1996. The petitioner was permitted to retire on 30.06.2008.

3. It was found that the pay was erroneously fixed at Rs.1,200/- instead of Rs.1,100/- as Selection Grade Pay for Electrician Grade-II in terms of G.O.Ms.No.567 and 586. The relevant portions of the same is extracted below:

"In G.O.Ms.No.567 and 586 / Finance (PC) Department dated 01.08.1992 the pay scale for the post of Electrician Grade-I and Grade-II was revised as follows:

Category	Existing Scale of Pay	Revised Scale of Pay as per G.O.567/ 01.08.1992
Electrician Grade-I	Rs.610-1075	Rs.1100-1660
Electrician Grade-II	Rs.555-970	Rs.950-1500

4. The petitioner had thus been paid Rs.1,200/- whereas the scale of pay which he was entitled to was Rs.1,100/-. With a view to recover the excess payment that was made erroneously, the impugned order was passed whereby the correct scale of pay was fixed and the excess payment was sought to be recovered. It was submitted that a sum of Rs.1,17,047/- has been recovered.

5. Though a faint attempt was made by the learned counsel for the petitioner to suggest that there was nothing wrong with the fixation of scale of pay, however, when pointed out that Electrician Grade-I was only entitled to a Grade Pay of Rs.1,100/-, it was further submitted that the recovery is bad in law inasmuch the recovery proceeding was initiated without putting the petitioner on notice. Thus, the petitioner is only entitled to the scale of pay of Rs.1,100/- in his post as Electrician Grade-I, any payment over and above Rs.1,100/- is in excess of his entitlement.

6. To the contrary, it was submitted by the learned counsel for the Respondents that the petitioner was entitled to a grade pay of Rs.1,100/- and

any payment over and above was clearly in excess of his entitlement. It was further submitted that any excess payment is liable to be recovered and thus the writ petition is without merit.

7. The question that requires to be resolved is whether the recovery proceedings without even putting the petitioner on notice can be sustained. Any recovery ought to be made only after putting the petitioner on notice. In this regard, it may be relevant to note that the Government of Tamil Nadu Finance (Pension) Department has issued a Government Order in G.O.Ms.No.286 dated 28.08.2018 wherein after referring to the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and others etc., vs. Rafiq Masih (White Washer)* reported in (2015) 4 SCC 334, it was held that though the employer may have the legal right to recover payments that have been made erroneously, however, whether recovery have to be made ought to be decided based on the facts of the case and that employer must keep in mind before resorting to the recovery proceedings as to whether the hardship caused to the employee would outweigh the employer's right to recover. In the said Government Order, it has been clarified that in a case where the authorities decide to rectify and recover any erroneous pay, notice

must be issued of the decision to rectify the same which has resulted in the overpayment and proposal to recover such excess payment. The employee must be provided with an opportunity to show that any recovery would cause prejudice/ hardship of a nature which would far outweigh the equitable balance of the employer's right to recover. On considering the objections, a speaking order must be passed. In the present case, without even putting the petitioner on notice, there has been recovery which is contrary to the above Government order and has resulted in the petitioner being denied an opportunity to show that recovery in the instant case would fall within the exception carved out in the judgment in *Whitewasher's* case and thus impermissible. In view of the same, the Respondents are directed to refund the amounts that have been recovered i.e., the amount of Rs.1,17,047/-, which has been recovered from the petitioner's Death Cum Retirement Gratuity with interest. It is thereafter open to the Respondents to issue a notice and proceed to recover keeping in mind the law laid down by the Hon'ble Supreme Court in *Whitewasher's* case and G.O.Ms.No.286 dated 28.08.2018, which provides the method, manner and factors to be considered for recovery of over paid amounts.

8. With the above observations, the writ petition stands disposed of.
No costs. Consequently, the connected miscellaneous petition is closed.

22.08.2023

Index: Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No
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W.P.No.11552 of 2011

MOHAMMED SHAFFIQ, J.

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Pre-Delivery order in
W.P. No.11552 of 2011

22.08.2023