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W.A.Nos.2334 to 2342 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.Nos.2334 to 2342 of 2011

The Deputy Chief Manager (Personnel) TPS-II
O/o The Chief General Manager,
Thermal Power Station – II and Extension,
Neyveli Lignite Corporation Limited,
Neyveli.

... Appellants in all WAs

Vs.

A.Anbuchelvan	... Respondent in WA.No.2334/2011
V.Narasimman	... Respondent in WA.No.2335/2011
S.Manickkam	... Respondent in WA.No.2336/2011
A.Jude	... Respondent in WA.No.2337/2011
S.Sankar	... Respondent in WA.No.2338/2011
G.Piramanayagam	... Respondent in WA.No.2339/2011
K.Subramanian	... Respondent in WA.No.2340/2011
A.Natarajan	... Respondent in WA.No.2341/2011
K.Sivakumar	... Respondent in WA.No.2342/2011

Prayer : Appeals filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 26.09.2011 made in W.P.Nos.9364 to 9367 of 2011, W.P.Nos.20592, 20593, 21698 and 21699 of 2011 and W.P.No.20865 of 2011 dated 27.09.2011 respectively.

In all WAs

For Appellants : Mr.N.A.K.Sarma

For Respondents : Ms.Selvi George



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COMMON JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

Since these appeals arise out of a common order passed by the Writ Court dated 26.09.2011 made in W.P.Nos.9364 to 9367 of 2011, 20592, 20593, 21698 and 21699 of 2011 and W.P.No.20865 of 2011 dated 27.09.2011 respectively, with the consent of the learned counsel appearing for both sides, all these writ appeals were heard together and are disposed of by a common order.

2. All these private respondents herein were the employees of the Neyveli Lignite Corporation Limited (NLC) while they were working, a Scheme of the NLC brought in by the employer that, if those employees acquired additional qualification like B.E. qualification, AMIE qualification, that would make them entitled to claim for an additional incentive increment. Pursuant to the said Scheme, the employees not only the private respondents herein but several such employees claimed advance incentive increments for having acquired qualification like B.E., AMIE.



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3. Accepting the same, from 1992 to 1995 these employees were given such advance incentive increment by the employer.

4. However, at one point of time i.e. in the year 2009 only they have come forward to issue a communication stating that, insofar as the higher qualification of AMIE is concerned, it consists of two parts viz., Part A and Part B. Some of the employees have completed Part A and some of them have not completed the Part B, but within a period of one year they were directed to complete Part B also, that means they should complete the entire Part B of the higher qualification and report, otherwise the incentive increment already granted to them would be stopped and it would be recovered.

5. Despite the said communication dated 21.02.2009, some of the employees like the present respondents herein have not completed the second Part or B part of the AMIE qualification, therefore the employer had come forward to issue proceedings dated 13.09.2011 that, atleast 18 employees did not pass AMIE Section “B” within the stipulated time, therefore the basic pay of those employees had to be reduced by one increment with effect from June 2011.



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6. When such an order had been passed on 20.12.2010 subsequently those orders were under challenge in the respective writ petitions before the Writ Court.

7. The immediate urge for those petitioners i.e., the employees to come before this Court to file the writ petitions was that, it is not only the increment that has been allowed by the employer was stopped but also the amount paid by way of advance increment from 1992 onwards or 1995 till 2010 or 2011 were directed to be recovered.

8. Those writ petitions were heard together and disposed by a learned Judge by order dated 26.09.2011 and 27.09.2011, where, the learned Judge having considered the factual matrix of the case and after hearing both sides was of the view that, the withdrawal of the advance increment given to these employees made by the employer NLC was to be justified because the employees had not been completed second Part of the higher qualification viz., AMIE.

9. However, the learned Judge has taken the view of course following the Hon'ble Supreme Court judgment reported in **(2010) 1 SCC**



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440 in the matter of *Cooperative Societies Vs. Israil Khan* and had expressed the view that, insofar as the recovery proceedings are concerned, since the amount has already been paid and therefore the said recovery need not be made, therefore only to the extent of the recovery, the learned Judge interfered with the action on the part of the employer NLC and accordingly the said writ petitions were partly ordered but partly dismissed.

10. As against the said orders passed by the Writ Court dated 26.09.2011 and 27.09.2011, no appeals have been filed by the employees, however the employer NLC have filed this batch of writ appeals.

11. Questioning the said order passed by the learned Judge in the Writ Court, Mr.N.A.K.Sarma, learned counsel appearing for the appellant NLC would contend that, the Scheme itself envisages only for those who acquired the higher qualification will be entitled to get the advance increment.



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12. However, these employees have not completed the higher qualification in full as they completed only Part A of the AMIE and Part B of the AMIE has not been completed. For such completion one year grace period also was given from 2009 to these employees despite that they could not complete the second Part, therefore it cannot be construed that they acquired the higher qualification making them entitled to get the advance incentive increment.

13. Therefore, the NLC had no other option except to come forward to withdraw such advance incentive increment and also what has been paid hitherto also to be recovered because such a payment made to these employees is a wrong payment or unjust enrichment on the part of the employees, therefore on that ground they wanted to recover the amount also.

14. Such a recovery has now been interfered with by the learned Judge, despite the learned Judge having accepted the view taken by the NLC that stopping of the advance incentive increment to these employees is to be justified.



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15. The learned counsel for the appellant would further submit that, relying upon the judgment of the Hon'ble Supreme Court reported in *(2010) 1 SCC 440* is a wrong application in the facts of the case and in fact at para 9 of the said judgment of the Hon'ble Supreme Court, it has been specifically stated that, most of the employees who received similar relief have refunded or have agreed to refund the excess payment. Making any exception in the case of the respondents would also lead to discrimination. Despite this observation having been made in para 9 of the said judgment cited supra in *Cooperative Societies* case, the learned Judge relied upon the said judgment and granted the relief to the employees from the recovery.

16. However, Ms.Selvi George, learned counsel appearing for the contesting respondents would submit that, 3 out of 9 employees have already retired they are V.Narasimman, K.Subramanian and A.Natarajan in the respective writ appeals in W.A.Nos. 2335, 2340 and 2341 of 2011, the remaining 6 employees still are in service.

17. The learned counsel however would rely upon the later judgment of the Hon'ble Supreme Court in the matter of *State of Punjab*



and others Vs. Rafiq Masih (White Washer) etc. reported in (2015) 4

WEB CO **SCC 334**, where, the learned counsel has relied upon para 12 of the

judgment which reads thus:

“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.”



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18. Relying upon this decision, the learned counsel would contend that, the learned Judge though relied upon 2010 judgment subsequent to the impugned order the law is well developed and in the 2014 judgment of *White Washer's* case makes it very clear that, where all the circumstances only such kind of recovery is not possible and these mandatory guidelines issued in para 12 of the said judgment of the following cases certainly would apply to the facts of the present case also, therefore all the 9 employees would be covered by the said decision, hence the view taken by the learned Judge through the impugned order can very well be supported and justified by applying the ratio of this judgment, he contended.

19. However, the learned Standing Counsel appearing for the NLC would submit that, this judgment is referred with regard to the pay and allowances and it is not to the advance incentive increment like a Special Scheme envisaged by the employer NLC, the ratio made in this judgment i.e. *White Washer's* case shall not be made applicable to the facts of the present case, he would submit.



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20. We have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

21. Insofar as this stopping of advance incentive increment to the employees is concerned, the learned Judge has not interfered with and as against which there was no appeal filed by the employees.

22. Therefore, the only question is whether the action taken by the employer NLC to recover the amount by way of advance incentive increment for the period from 1992 or 1995 onwards or 2009-2011 are justified is the only question, we found that the learned Judge has relied upon 2010 judgment in *Cooperative Societies* case, subsequently this position has been clarified and an authoritative pronouncement has come from the Hon'ble Supreme Court in *Rafiq Masih (White Washer)* case cited supra, where in para 12 the Hon'ble Supreme Court has made it very clear that, in certain situations where the recovery would be impermissible in law.



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23. The situation (ii) is recovery from retired employees, or employees who are due to retire within one year, of the order of recovery is concerned, atleast 3 employees, as stated supra, out of those 9 employees have retired from service. Therefore, the para 12 clause (ii) would apply to them. Insofar as para 12 clause (iii) is concerned, 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, also cannot be recovered as that kind of recovery also would be impermissible in law. Admittedly, in all these cases the excess amount has been paid starting from 1992 till 1995 and it continues till 2009 or in some cases 2010 and in some cases 2011. Insofar as these period of payment is concerned, certainly it is more than 5 years hence 2010 only the order of recovery has been first issued by the NLC, therefore it is beyond 5 years period from the date of payment of excess amount hence under clause (iii) of para 12 of *White Washer's case* cited supra, certainly the recovery now sought to be made against these employees cannot be permitted as it is impermissible in law as per the decision of the Hon'ble Supreme Court cited supra.



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24. In view of the above, we have no hesitation to hold that, the decision taken by the learned Judge through the impugned order for the aforesaid reason also can be sustained accordingly it is sustained. In the result, all these appeals are fail and therefore they are dismissed. No costs.

(R.S.K., J.) (K.B., J.)

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

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