



W.P.No.31856 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.01.2023

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THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.31856 of 2005

and

W.P.M.P.No.34937 of 2005

The Superintending Engineer,
Dharmapuri Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Dharmapuri.

.... Petitioner

vs

1. The Tamil Nadu Electricity Board,
Accounts and Executive Staff Union,
Hosur.

2. The Presiding Officer,
Labour Court, Salem.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the second respondent relating to its order dated 29.11.2004 passed in I.D.No.384 of 2003 and quash the same as illegal and without jurisdiction.



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For Petitioner : Mr.Anand Gopalan
for M/s. T.S.Gopalan & Co.,

For respondents : No appearance for R1
R2-Court.

ORDER

This Writ Petition has been filed challenging the order passed by the second respondent dated 29.11.2004 made in I.D.No.384 of 2003, directing the petitioner to pay the amount deducted from the salary of the employee K.Arumugam within three months from date of the award with 6% interest from the date of petition till the date of realisation.

2. Heard the learned counsel for the petitioner and perused the materials available on record.

3. The first respondent/ Union raised a dispute on behalf of its member K.Arumugam, an employee of Tamil Nadu Electricity Board, working as Record Clerk in Hosur office in respect of recovery of excess amount paid to him while fixing his pay on his moving to selection grade. The Government in G.O.Ms.No.995 Labour and Employment Department dated 16.10.2003 referred the dispute for adjudication to the second respondent/Labour Court which was taken on file in I.D.No.384 of 2003.



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4. It is the contention of the first respondent Union before the Labour Court that its member K.Arumugam who was working as Record Clerk joined in the services of Tamil Nadu Electricity Board on 10.04.1970; that he had been working as Record Clerk from 05.11.1977; that he was entitled to selection grade on his completion of 10 years of service in the post of Record Clerk; that the employee was granted selection grade salary from 01.10.1988; that the management has ordered recovery of excess payment from the salary of the employee in 10 instalments from May,1996 to February 1997; that the recovery is illegal and contrary to the Rules and Regulations of the Board; that the recovery order was made after a period 8 years without giving any opportunity to the employee and prayed for refund of the amount to the employee.

5. Learned counsel for the petitioner would contend that K.Arumugam, a member of the first respondent/Union on completion of 10 years of service in the post of Record Clerk was conferred Selection Grade and his pay was revised. While revising the pay, a wrong fixation of pay was ordered which resulted in excess payment of Rs.4970/-. This excess payment was detected by Audit Wing on 06.04.1995 and hence, the recovery order was passed.

6. The issue involved in this writ petition is directly covered by a



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judgment of the Hon'ble Apex Court in the case of ***State of Punjab Vs. Rafiq Masih (Whitewasher) (2015 (4) SCC 334)*** where it has been held that recovery in respect of excess payment is impermissible from an employee when the employee was not at fault at the time such pay fixation was done in his favour. Relevant portion of the judgment is quoted herein below :-

"18. 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.



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(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."*

7. It is noticed that the employee K.Arumugam was not in any way responsible for wrong fixation for his salary and consequently, he was not responsible for the excess payment made to him during his service.

8. In light of the above, this Court is of the view that the issue involved in this writ petition is squarely covered by the judgment of the Hon'ble Supreme Court reported in **(2015 (4) SCC 334)** supra and consequently, the recovery from the salary of the employee K.Arumugam should not have been made by the petitioner. Therefore, this Court is of the view that the award passed by the Labour Court need not be interfered with. Accordingly, the Writ Petition stands dismissed. The award passed by the second respondent/Labour Court in I.D.No.384/2003 dated 29.11.2004 is confirmed. No costs. Consequently, connected miscellaneous petitioner is closed.

12.01.2023

Index:Yes/No
Speaking/Non-speaking order

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J.NISHA BANU,J.

vsi

To

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Accounts and Executive Staff Union,
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2. The Presiding Officer,
Labour Court, Salem.

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