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W.P.No.13941 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.13941 of 2020

and

W.M.P.Nos.17320 & 17322 of 2020

B.Vidhya

D/o.(Late)M.Balasubramanian

No.15/4, Kannan Nagar

Dharapuram

Tiruppur District

... Petitioner

/Vs/

1.The Joint Managing Director (Secretary)

Tamil Nadu Generation and Distribution Corporation Ltd.,

No.144, Anna Salai, Chennai 600 002

2.The Deputy Chief Internal Audit Officer

Tamil Nadu Generation and Distribution Corporation Ltd.,

Audit Branch

Coimbatore Regional Office

TATABAD, Coimbatore 641 012

3.The Superintending Engineer (O & M)

Tamil Nadu Generation and Distribution Corporation Ltd.,

Palladam Electricity Distribution Circle

Palladam

4.The Executive Engineer (O & M)

Tamil Nadu Generation and Distribution Corporation Ltd.,

Dharapuram Division

Palladam Electricity Distribution Circle

Dharapuram

... Respondents



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Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 26.08.2020 passed by the 4th Respondent in Memo No.EE/O&M/Dha/Adm/A.2/F.Audit/D.No.21/2020, dated 26.08.2020 and also the recovery order issued by the 1st Respondent vide Secy.Lr.No.27241/A.3/A.31/2019-1, dated 06.07.2020 and quash the same.

For Petitioner : Mr.P.Chandrasekaran

For Respondents : Mr.K.Rajkumar
Standing counsel (TNEB)

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 26.08.2020 passed by the 4th Respondent in Memo No.EE/O&M/Dha/Adm/A.2/F.Audit/D.No.21/2020, dated 26.08.2020 and also the recovery order issued by the 1st Respondent vide Secy.Lr.No.27241/A.3/A.31/2019-1, dated 06.07.2020 and quash the same.

2.Heard Mr.P.Chandrasekaran, learned counsel for the Petitioner and Mr.K.Rajkumar, learned Standing counsel (TNEB) for the Respondents.



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3.The Petitioner has filed this Writ Petition challenging the order of recovery and re-fixation of his salary on the ground that the Petitioner's pay was wrongly fixed in the cadre of selection grade Junior Assistant instead of Assistant. The Petitioner joined as a Junior Assistant in the year 2001 and got his promotion to the cadre of Assistant during 2010. But the Petitioner did not opt to join in the post of Assistant. However, the salary was fixed for the selection grade Junior Assistant which is equivalent to the scale of Assistant, except grade pay. Later when the audit objection was raised on 31.08.2018, the Respondents have issued the impugned proceedings to recover the excess pay paid to the Petitioner due to wrong fixation and to re-fix her pay in accordance with the post in which she is attached.

4.Mr.P.Chandrasekaran, learned counsel for the Petitioner submitted that the Petitioner did not suppress any material facts and for the wrong committed by the Respondents, the Petitioner should not be penalised and it is unfair to issue a recovery notice for recovering a sum of Rs.3,02,774/- (Rupees three lakh two thousand seven hundred and seventy four only) at one stroke. Further, the employees union had made a request to the Respondents Corporation stating that the Respondents should reconsider the orders issued for recovery. The



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same was considered and the Respondents Corporation has issued an order in memo (Per.)No.58554/A3/A31/2018-1, dated 21.01.2019 in which the request of the Union has been considered and it has been ordered to issue an order of recovery to take effect from 25.09.2018. The said order was issued to all the Drawing Officers to cancel the selection grade increment granted to the employees, after issuance of promotion order and to recover the excess pay and allowance from the employees immediately. The date of implementation of the said order has been postponed to 25.09.2018, in pursuant to the request made by the Union.

5.Mr.P.Chandrasekaran, learned counsel for the Petitioner further submitted that the Petitioner has been given with the promotion in the cadre of Assistant, but she did not opt to join.

6.In such case, the third Respondent ought to have relieve the Petitioner as per the Memo No.100855/515/G.42/G.423/2002-1, (Administrative Branch), dated 30.08.2002. But the third Respondent did not opt to relieve her. The Petitioner is at no fault. Even if there is any wrong on the part of the person in charge who made fixation of pay to the Petitioner in the cadre of selection grade, the same is rectified in pursuant to the subsequent proceedings issued vide



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memo (Per.)No.58554/A3/A31/2018-1, dated 21.01.2019, wherein the request

of the Union has been considered and implementation of the order of recovery has been postponed to 25.09.2018. Since the Petitioner has been promoted and re-fixation in the cadre of selection grade has been given to her as early as on 28.03.2011 vide Memo No.027884/1081/Adm.I/A1/2010, the recovery should not have been made by considering the Petitioner's case which falls out of the outer limit dated 25.09.2018 or atleast the recovery ought to have been made from the date when the recovery is ordered to be implemented.

7.However, the learned counsel for the Petitioner brought the attention of this Court to the Memo in Secretariat Branch Memo.(Per.)No.585/A3/A31/2015-1, dated 13.01.2015, wherein instructions have been issued to initiate proceedings for recovery of excess pay within a period of four years from the date of such fixation and any notice to be issued for recovery of excess pay should be within the limitation period of five years.

8.In the instant case, the excess pay fixation was made in the year 2011 and the recovery proceedings has been issued in the year 2018 which is far beyond the period of limitation fixed, as per the earlier memo Secretariat Branch Memo.(Per.)No.585/A3/A31/2015-1, dated 13.01.2015.



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9. In view of the same, this Writ Petition is allowed and the order passed by the 4th Respondent in Memo No.EE/O&M/Dha/Adm/A.2/F.Audit/D.No.21/2020, dated 26.08.2020 and the recovery order issued by the 1st Respondent vide Secy.Lr.No.27241/A.3/A.31/2019-1, dated 06.07.2020 are hereby set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

28.11.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To

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R.N.MANJULA, J.

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