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W.P.No.17078 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.17078 of 2018
and
W.M.P.No.20335 of 2018

S.Ravindran

...Petitioner

-Vs-

1.The Chief Engineer (Personnel),
Tamil Nadu Generation and
Distribution Corporation,
144, Anna Salai, Chennai - 600 002.

2.The Superintending Engineer,
(Purchase & Administration)
Tamil Nadu Generation and
Distribution Corporation - MTPS - I,
Mettur Dam - 6, Salem.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the 2nd respondent made in A.Aa.No.005094/1029/Ni.P.1(5)/Ko.Thani/2018-3, dated 14.06.2018, to quash the same and to consequently direct the respondents to continue to pay the salary and other benefits without any revision and re-fixation.



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For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.David Sundar Singh

ORDER

Heard Mr.L.Chandrakumar, learned counsel for the petitioner and Mr.David Sundar Singh, learned Standing Counsel for the respondents.

2. The second respondent herein, through the impugned proceedings dated 14.06.2018, seeks for recovery of some excess payment in the pay fixation made from 10.07.2003 to 01.07.2017. As per the said proceedings, while fixing the pay scale of the petitioner, on par with his junior, namely K.Venkatachalapathi, the department had committed a mistake on determining the basic pay at Rs.6,475/- instead of Rs.5,950/-. The petitioner has now gone on voluntary retirement, with effect from 30.09.2021.

3. The Hon'ble Supreme Court in the case of ***State of Punjab Vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***, had held that excess payments, which have been mistakenly paid by the employer to the employee for a period in excess of 5 years, is impermissible in law. The relevant portion of the order reads as follows:-



“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.

(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



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extent, as would far outweigh the equitable balance of the employer's right to recover.”

4. Apparently, the impugned proceedings seeks for recovery of the excess payment, which is admittedly fixed owing to the mistake of the department for a period exceeding 5 years from the date of the impugned proceedings, which is impermissible, as per the laid down by the Hon'ble Supreme Court in *White Washer's case (supra)*. As such, the consequential recovery cannot be sustained.

5. For all the foregoing reasons, the impugned proceedings issued by the second respondent herein dated 14.06.2018 is quashed. In view of the quashing of the impugned recovery order, the respondents shall forthwith disburse the retirement benefits to the petitioner, atleast within a period of four weeks from the date of receipt of a copy of this order. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

09.02.2023

Index:Yes/No
Speaking order/Non-speaking order
hvk



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M.S.RAMESH,J.

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