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WP.No.6440/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.6440/2017 & WMP.No.6946/2017

N.Kumarasamy

... Petitioner

Versus

- 1 The Chairman-cum-Managing
Director TANGEDCO Ltd 144 Anna Salai
Chennai-02
- 2 The Chief Engineer/
Personnel TANGEDCO Ltd 144 Anna Salai
Chennai-02
- 3 The Superintending Engineer
TANGEDCO Ltd Vellore Electricity
Distribution Circle Gandhi Nagar Vellore-
632 006
- 4 The Chief Internal Audit
Officer Vellore- Ranipet TANGEDCO Ltd
Gandhi Nagar Vellore-632 006
- 5 The Executive Engineer
Operation and Management TANGEDCO Ltd
Ranipet Vellore District.

... Respondents



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Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for records on the file of fifth respondent relating to order issued in Memo No.82/ EE/ O &M/ Rpt/ Adm.s/ A-2/ F-Adit/ 2017 dated 08.03.2017 and quash the same.

For Petitioner : Mr.R.Chandrasekaran
For Respondents : Mr.K.Rajkumar
Standing counsel

ORDER

- (1) The writ petition has been filed in the nature of a certiorari seeking interference with the order of the 5th respondent, Executive Engineer, Operation and Management, TANGEDCO, Ranipet, in Memo No.82/ EE/ O &M/ Rpt/ Adm.s/ A-2/ F-Adit/ 2017 dated 08.03.2017 and to set aside the same.
- (2) The writ petitioner had joined the respondents as Office Helper on 02.01.1999. He was finally selected as Junior Assistant through internal selection and joined that post on 23.08.2007. At the time of filing of the writ petition, he was working as Accounts Supervisor. It is claimed that since the petitioner was selected from among the Office Helpers/Record Clerks, the post to which he was promoted namely,



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Junior Assistant, was higher in grade and carried higher duties and responsibilities than that of Office Helpers/Record Clerks. It is also claimed that protection of higher pay is also granted to the employees who are so promoted. It had been stated that however, an Audit Slip had been issued on 13.07.2010 seeking recovery of the pay which the petitioner had received while working as Junior Assistant stating that it should only be in the level of Office Helper/Record Clerk. Questioning this particular order, the writ petition has been filed.

- (3) In the counter affidavit, reliance has been placed to an order of a learned Single Judge of this Court in WP.No.25240/2010 filed by one P.Manivannan, wherein the petitioner therein had questioned recovery of the amount and had sought refund of the amount so recovered in quite similar situations. The learned Single Judge, by an order dated 16.10.2012, has observed as follows:-

"The petitioner was not in any way responsible for fixing the pay. It was an action taken by the respondents to fix his salary. The petitioner has accepted the pay given to him by the respondents. The counter affidavit filed by respondent gives a clear



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indication that the pay was wrongly fixed without the intervention of the petitioner, it is not open to the respondents to recover excess amount. The respondents are therefore, restrained from recovering the excess amount paid to the petitioner prior to the impugned Board Proceedings [Per] B.P.[CH] No.17 [Adm. Branch] dated 08.03.2010. In case, the excess amount has already been recovered, necessarily, it should be refunded to the petitioner forthwith."

- (4) It is further stated that thereafter, the respondents have filed a Writ Appeal in SR.No.4700/2013. It is evident that since no further information is given, the Writ Appeal has still not been taken up for consideration by the Division Bench. It had been stated that subsequent to that particular order in the writ petition, instructions have been given by a letter dated 15.02.2016 that if excess amount is paid to the employees prior to 08.03.2010, they need not be recovered, but keeping that particular date as a cut off date, subsequently recovery could be effected.

- (5) But the learned counsel for the petitioner placed reliance on the



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judgment of the Hon'ble Supreme Court reported in **2015 [4] SCC 334 [State of Punjab and Others Vs. Rafiq Masih [White Washer]]**, wherein the Hon'ble Supreme Court had occasion to examine a batch of matters wherein similar issue had been raised and the only aspect which was pointed out by the Hon'ble Supreme Court was that there should not be any mistake on the part of the petitioner in misrepresentation of his pay or, he should not be either directly or indirectly involved in the payment of higher scale of pay to him. The relevant paragraph of the said judgment is extracted 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i)Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).



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(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

- (6) It is clear that the burdening the petitioner with recovery of salary which he had received for the post of Junior Assistant which is certainly on higher grade with higher responsibilities than that of Office Helper/Record Clerk would be termed as iniquitous. The respondents have not produced any record to show that the order



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referred to above of the learned Single Judge had been interfered with by the Division Bench in the counter. The only reference given is of a Writ Appeal having been filed and only SR number is given and the Writ Appeal number is also not been given. The present status of that particular SR number is also not stated. Therefore, there cannot be two differential treatments given and that recovery itself had been prevented by the order of the learned Single Judge. Certainly, recovery cannot be effected by the respondents.

- (7) I hold that the impugned proceedings will necessarily have to be interfered with and the same is set aside. The writ petition stands **allowed**. No costs. Consequently, connected miscellaneous petition is closed.

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AP

Internet : Yes



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C.V.KARTHIKEYAN, J.,

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