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W.P.No.24340 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2023

CORAM:

**THE HONOURABLE MR.JUSTICE M.S.RAMESH**

**W.P.No.24340 of 2017**  
**and**  
**W.M.P.Nos.25752 & 25753 of 2017**

H.Rajkumar

...Petitioner

-Vs-

- 1.The Chairman cum Managing Director,  
TANGEDCO Ltd.,  
144, Anna Salai, Chennai - 600 002.
- 2.The Chief Engineer (Personnel),  
TANGEDCO Ltd.,  
144, Anna Salai, Chennai - 600 002.
- 3.The Chief Engineer,  
TTPS, Tuticorin.
- 4.The Superintending Engineer/P&A,  
TTPS, Tuticorin.

...Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 4<sup>th</sup> respondent in Memo No.31952/SE/P&A/Adm III (3)/2015-1 and to quash the order dated 26.05.2015 made therein and consequently direct the 1<sup>st</sup>



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respondent to consider and pass orders on the representation/memorandum of appeal dated 23.03.2015 submitted by the petitioner (preferred against the order dated 04.02.2015 made by the 4<sup>th</sup> respondent on the instructions of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein, in his proceedings Memo No.SE/P&A/ADM1/A3/F.S.R/No.45/15 denying the regularisation of the petitioner's services and granting all the service benefits.

For Petitioner : Mr.V.Shanmugham

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

### **ORDER**

Heard Mr.V.Shanmugham, learned counsel for the petitioner and Mr.Anand Gopalan, learned Standing Counsel for the respondents.

2. Based on certain audit objections with regard to payment of full subsistence allowance for the period between 25.06.2005 and 13.12.2011, when the petitioner was under suspension, the fourth respondent has issued the impugned order, seeking for recovery for a sum of Rs.4,92,300/-.

3. The learned counsel for the petitioner submitted that prior to issuance of the impugned order of recovery, no enquiry was conducted and



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that the recovery order, which is for a period exceeding 5 years, cannot be made, in view of the law laid down by the Hon'ble Supreme Court in the case of *State of Punjab Vs. Rafiq Masih (White Washer)* reported in (2015) 4 SCC 334.

4. Per contra, the learned Standing Counsel for the respondents submitted that the delay in completion of the disciplinary proceedings was on the part of the petitioner herein and therefore, he ought not to have been paid with the full subsistence allowance. The learned Standing Counsel also submitted that based on the audit objections, they were constrained to issue the recovery order and therefore, no prior notice is required. It is also their case that since similar recovery proceedings were initiated against five others also, out of which four have not challenged the recovery proceedings and have acquiesced to the recovery, no interference is required to the impugned order of recovery.

5. The Hon'ble Supreme Court in *White Washer' case (supra)* had held that excess payments, which have been mistakenly paid by the employer to the employees belonging to Class-III and Class-IV (or Group-C and Group-D



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

6. Admittedly, the recovery, which is now sought to be made, is for the period commencing from 25.06.2005 till 13.12.2011, which is a period exceeding 5 years and which is impermissible, in view of the law laid down in the aforesaid decision of the Hon'ble Supreme Court. Likewise, the impugned order is also opposed to the directions of the Hon'ble Supreme Court, since the petitioner herein, who was an Assistant at that relevant point of time, belongs to Group-C category, from whom recovery is also impermissible in law for the wrong payment made by the respondents.

7. Apart from such illegality, it is seen that that the impugned order has been issued without calling for any objections of the petitioner and hence, the order itself is in violation of the principles of natural justice and on this grounds also, the petitioner is entitled to succeed.



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8. For all the foregoing reasons, the impugned memo issued by the fourth respondent herein dated 26.05.2015 is quashed. In case the respondents have recovered the whole amount or a part of the amount indicated in the impugned order, the same shall be forthwith refunded to the petitioner, within a period of two weeks from the date of receipt of a copy of this order.

9. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

10. At this juncture, the learned counsel for the petitioner submitted that he has also given a representation, seeking for regularization and other service and monetary benefits, which is yet to be considered by the concerned respondent.

11. This representation would give way for another cause of action, which is not connected with the issue involved in the present writ petition. Nevertheless, if the petitioner is granted liberty to approach the respondents with a fresh representation redressing his grievances, with a consequential



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direction to the respondents to consider the same, the ends of justice could be secured.

12. In the light of the above observations, the petitioner is granted liberty to make a fresh representation to the respondents ventilating his grievances and on receipt of the same, the respondents shall consider it on its own merits and pass appropriate orders in accordance with law, within a period of eight weeks from the date of receipt of the representation.

**01.02.2023**

Index:Yes/No

Speaking order/Non-speaking order

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To

1.The Chairman cum Managing Director,  
TANGEDCO Ltd.,  
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2.The Chief Engineer (Personnel),  
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**M.S.RAMESH,J.**

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