



W.P.(MD)No.13725 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:10.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.13725 of 2020
W.M.P(MD).No.11396 of 2020

A.Shanmugasundaram

... Petitioner

Vs.

1.The Joint Managing Director (Secretary),
Tamil Nadu Generation and Distribution Corporation Limited,
144, Anna Salai,
Chennai-600 002.

2.The Chief Engineer/Personnel,
Tamil Nadu Generation and Distribution Corporation Limited,
144, Anna Salai,
Chennai-600 002.

3.The Chief Internal Audit Officer,
Tamil Nadu Generation and Distribution Corporation Limited,
144, Anna Salai,
Chennai-600 002.

4.The Superintending Engineer (O&M),
Tamil Nadu Generation and Distribution Corporation Limited,
Tirunelveli Electricity Distribution Circle,
Maharaja Nagar, Tirunelveli.

... Respondents



W.P.(MD)No.13725 of 2020

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records in pursuant to the impugned order passed by the 3rd respondent in Audit Slip No.13 dated 29.10.2019, and also the recovery order communicated by the 4th respondent vide Lr.No.01917/116/Ni.Pi.-II/U-4/Ko.Thanikkai/2020-2 dated 10.09.2020 and quash the same and consequently, direct the respondents to grant existing pay to the petitioner.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.S.Arivalagan

ORDER

This Writ Petition has been filed to call for the records pertaining to the impugned order passed by the third respondent in Audit Slip No.13 dated 29.10.2019, and also the recovery order communicated by the fourth respondent vide Lr.No.01917/116/Ni.Pi.-II/U-4/Ko.Thanikkai/2020-2 dated 10.09.2020, quash the same and consequently, direct the respondents to grant existing pay to the petitioner.



W.P.(MD)No.13725 of 2020

WEB COPY

2. The case of the petitioner is that the petitioner was appointed in the respondent Electricity Board as Helper Trainee under compassionate appointment and has joined in the fourth respondent Electricity Board during the year 1991. Subsequently, the petitioner has been selected and appointed as Junior Assistant (Administration) through internal selection during the year 1994. He was promoted as Assistant (Administration) during the year 2002 and again, promoted as Administrative Supervisor during the year 2010 and posted to the office of Superintending Engineer/Generation Circle, Tirunelveli. On the basis of his seniority, the petitioner was promoted as Assistant Administrative Officer and posted at Salem Electricity Distribution Circle. Based upon his request, the petitioner has been transferred to Tirunelveli Electricity Distribution Circle. There was a pay anomaly in between the petitioner and his junior. In order to rectify the pay anomaly, the respondent Board has entered into 12(3) settlement vide proceedings No.9 dated 02.03.2018 in which it has been stated that *“the revised pay level shall take effect from 1st December 2015 (notional fixation on 01.01.2016) and with monetary benefit from*



W.P.(MD)No.13725 of 2020

01.10.2017”. As per clause (11) of the said proceedings, the petitioner was paid the revised pay level. However, subsequently, the same was sought to be recovered on the ground that the revised pay level was paid prior to 01.10.2017 and thereby, the petitioner was issued a show cause notice. He has filed his objection, however, the objection was rejected. Thereafter, he has filed a further objection and the same was forwarded to the first respondent for getting clarification. However, without getting clarification from the first respondent, the respondents 3 and 4 have hurriedly passed the impugned orders. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the petitioner was appointed as clause III employee and now is working as clause II employee and the petitioner has not availed the benefit by way of misrepresentation. Based on 12(3) settlement, the petitioner was paid the revised pay level and there is no suppression on the part of the petitioner. Hence, the impugned orders are contrary to the decision rendered in ***State of Punjab vs. Rafiq Masih*** reported in



W.P.(MD)No.13725 of 2020

(2015) 4SCC 334.

WEB COPY

4. Per contra, the learned counsel appearing for the respondents would submit that in clause (11) of the said 12(3) settlement, it has been stated that “*the revised pay level shall take effect from 01.12.2015 (notional fixation on 01.01.2016) and with monetary benefit from 01.10.2017*”. Hence, the petitioner is not entitled to the revised pay level from 01.12.2015. However, inadvertently, the petitioner was paid the revised pay level prior to 01.10.2017 which is sought to be recovered by way of the impugned orders. Hence, no interference is warranted by this Court.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

6. The facts in the present case are not in dispute. Admittedly, there was a pay anomaly in between the petitioner and his junior and therefore, the respondent Board entered into 12(3) Settlement vide proceedings



W.P.(MD)No.13725 of 2020

WEB COPY

No.9 dated 02.03.2018. As per clause (11) of the said 12(3) settlement, the revised pay level shall take effect from 01.12.2015 (notional fixation on 01.01.2016) and with monetary benefit from 01.10.2017. Therefore, the revised pay level shall be in force from 01.12.2015. The grievance of the petitioner is that the revised pay level paid to the petitioner is sought to be recovered by way of the impugned orders. There is no misrepresentation on behalf of the petitioner to avail the benefit and it is for the respondents to effect the benefit based on the Board proceedings which cannot be cancelled. The very same issue came up for consideration before the Hon'ble Apex Court in ***State of Punjab vs. Rafiq Masih*** reported in (2015) 4SCC 334 and the relevant paragraph No.12 is extracted hereunder:-

“12. 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:



W.P.(MD)No.13725 of 2020

(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.”

7. Admittedly, the petitioner was appointed as clause III employee and now is working as clause II employee. The fact remains that the



W.P.(MD)No.13725 of 2020

petitioner has not made any misrepresentation in order to avail the benefit and the benefit was granted based on the Board proceedings No.9 dated 02.03.2018. Hence, applying the ratio laid down by the Hon'ble Apex Court in the case of *State of Punjab vs. Rafiq Masih* reported in **(2015) 4SCC 334**, this Court is inclined to set aside the impugned order issued by the third respondent in Audit Slip No.13 dated 29.10.2019 and also the recovery order issued by the fourth respondent in Lr.No. 01917/116/Ni.Pi.-II/U-4/Ko.Thanikkai/2020-2 dated 10.09.2020.

8. Accordingly, this Writ Petition is allowed. No costs. Connected miscellaneous petition is also closed.

10.01.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
ssb



W.P.(MD)No.13725 of 2020

WEB COPY

To

- 1.The Joint Managing Director (Secretary),
Tamil Nadu Generation and Distribution Corporation Limited,
144, Anna Salai,
Chennai-600 002.
- 2.The Chief Engineer/Personnel,
Tamil Nadu Generation and Distribution Corporation Limited,
144, Anna Salai,
Chennai-600 002.
- 3.The Chief Internal Audit Officer,
Tamil Nadu Generation and Distribution Corporation Limited,
144, Anna Salai,
Chennai-600 002.
- 4.The Superintending Engineer (O&M),
Tamil Nadu Generation and Distribution Corporation Limited,
Tirunelveli Electricity Distribution Circle,
Maharaja Nagar, Tirunelveli.



WEB COPY



W.P.(MD)No.13725 of 2020

M.DHANDAPANI,J.

ssb

W.P.(MD)No.13725 of 2020

10.01.2023