



W.P.No.2683 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM

**THE HONOURABLE Ms.JUSTICE R.N.MANJULA**

W.P. No.2683 of 2021

K.Dasarathan

...

Petitioner

/vs/

1. The Government of Tamil Nadu,  
rep. by its Secretary,  
Department of Energy,  
St. George Fort,  
Chennai – 600 009.
- 2.The Chairman – cum- Managing Director,  
TANGEDCO,  
No.144, Anna Salai,  
Chennai – 600 002.
3. The Superintending Engineer,  
Ennore Thermal Power Station,  
Ennore, Chennai – 600 057.
4. The Under Secretary,  
Health Fund and RTI Act,  
TANGEDCO, Secretariat Branch,  
No.144, Anna Salai,  
Chennai – 600 002.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India



W.P.No.2683 of 2021

to issue a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the third respondent in proceedings No. Nil dated 28.09.2018 and quash the same as illegal and direct the respondents 2, 3 and 4 to pay the sum of Rs.1,35,796/- which was recovered from the petitioner and further direct the respondents to pay the eligible interest for the recovered amount from 01.04.2014 till the date of payment within a time frame.

For Petitioner ... Mr.G.Alagesan

For Respondents ... Mr.S.Arumugam  
Government Advocate for R1

Mr.David Sundar Singh  
Standing Counsel for R2 to R4

### **ORDER**

Heard Mr.G.Alagesan, the learned Counsel for the petitioner, Mr.S.Arumugam, the learned Government Advocate for R1 and Mr.Davind Sundar Singh, the learned Standing Counsel for R2 to R4.

2. The petitioner has filed this writ petition challenging the



W.P.No.2683 of 2021

impugned order passed by the third respondent in proceedings No. Nil dated 28.09.2018 and direct the respondents 2, 3 and 4 to pay a sum of Rs.1,35,796/- which was recovered from the petitioner and further direct the respondents to pay the eligible interest for the recovered amount from 01.04.2014 till the date of payment.

3. The petitioner who worked as “Foreman Grade-III” with the third respondent office was allowed with the medical reimbursement for a sum of Rs.68,355/-. However, an order has been passed by the third respondent on 28.09.2018 stating that the petitioner is entitled to only Rs.4,941/- towards reimbursement but he has been wrongly sanctioned with an excess amount of Rs.68,355/- and hence the petitioner is liable to repay the balance amount of Rs.63,414/- along with interest of Rs.72,382/- aggregating to a sum of Rs.1,35,796/- It is further stated that the said sum would be adjusted against the petitioner’s leave encashment benefit of Rs.1,07,520/- and that he has to pay the balance amount of Rs.28,276/-. The said amount was later reduced to Rs.9,776/- and the petitioner has also paid the same.



W.P.No.2683 of 2021

4. It is seen from the records that the petitioner claimed a sum of Rs.60,855/-. The petitioner had submitted the medical claim for Rs.68,355/- and that has been sanctioned by the third respondent as well. It is not alleged that the petitioner had furnished any false medical bills or made a wrong claim. The petitioner's discharge summary would show that he had undergone a surgical treatment and the said fact was not in dispute. In fact the petitioner is covered under 'New India Health Insurance Scheme', as he is paying subscriptions towards the same has also been deducted from his salary.

5. Mr.G.Alagesan, the learned counsel for the petitioner, submitted that the petitioner is eligible to medical reimbursement of Rs.4,00,000/- per year in view of the medical insurance scheme; having sanctioned the medical reimbursements claimed by the petitioner to the tune of Rs.68,355/- as early as on 29.04.2014, all of a sudden the third respondent issued the impugned order dated 28.09.2018 without assigning any reason as to why the petitioner is entitled to claim only Rs.4,941/-; before issuing such demand notice and deducting the petitioner's leave salary towards the alleged excess payment, the petitioner was not put under notice to make



W.P.No.2683 of 2021

his submission and further the recovery has been made after four years.

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6. The primary submission made by the learned counsel for the respondents 2 to 4 is that the petitioner himself has given an undertaking that he would allow the respondents to recover the excess payment with interest.

7. Admittedly, the petitioner was a retired employee at the time of giving the undertaking. Hence the petitioner would have been in compulsive circumstances to give such an unfair undertaking. Further, if anyone gives an undertaking for any amount which they are not liable to pay but due to ignorance or otherwise, such undertaking cannot be construed as a legally enforceable one.

8. The arbitrariness in the order of the third respondent is writ large on the face of it. The third respondent was pleased to impose interest for the alleged excess payment made towards the medical claim of the petitioner for none of the fault on the part of the petitioner, the leave salary was not allowed with any interest. The third respondent was happy to have



W.P.No.2683 of 2021

a lien over the leave salary of the petitioner for an imaginary interest imposed on an imaginary excess payment made to the petitioner.

9. The genuineness of the medical claim made by the petitioner is not disputed. Without even assigning any reason as to how the undue payment has been made to the petitioner, an arbitrary order has been passed on 28.09.2018 for recovery. The respondents cannot take the advantage of ignorance on the part of the petitioner and assert that they are entitled to recover the amount in view of the earlier undertaking letter given by the petitioner.

10. Even for the sake of the argument, if the claim of the petitioner is not eligible for reimbursement, the order ought to have been passed in that manner at the earliest point of time. Had the respondents returned the very medical claim by stating any reasons, it would have been possible for the petitioner to make his claim under the Insurance Scheme at least. But the respondents 2 to 4 have passed an arbitrary order for recovery by imposing a huge interest of Rs.72,382/- and inflated the alleged excess along with interest to the tune of Rs.1,35,796/- and slapped a recovery



W.P.No.2683 of 2021

against a retired employee.

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11. The recovery order has been made in respect of amount which is impermissible for recovery as per the dictum of the Supreme Court held in *State of Punjab & others Vs. Rafiq Masih reported in (2015) 4 SCC 334*. Since the recovery made by virtue of the impugned order is an illegal recovery, the same is liable to be set aside irrespective of the fact that the petitioner had given an undertaking. Hence the respondent is liable to refund the whole of the amount which was recovered from the petitioner.

12. Accordingly, this Writ Petition is allowed and the impugned order passed by the third respondent in proceedings No. Nil dated 28.09.2018 is hereby quashed and the respondents 2, 3 and 4 are directed to refund the sum of Rs.1,35,796/- which was recovered from the petitioner, along with interest at the rate of 6% from the date of the impugned order till the date of refund. No costs.

**06.03.2024**



W.P.No.2683 of 2021

Index: Yes / No

Speaking order / Non-speaking order

Neutral Citation Case: Yes / No

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W.P.No.2683 of 2021

To:

WEB COPY

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W.P.No.2683 of 2021

**R.N.MANJULA ,J.**

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W.P.No.2683 of 2021

06.03.2024