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W.P.No.13742 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

W.P.No.13742 of 2015

and

M.P.No.1 of 2015

Parameswari

... Petitioner

-VS-

1.The Superintending Engineer,
Salem Electricity Distribution Circle,
Tamil Nadu Electricity Board now TANGEDCO,
K.N.Colony, Salem -14.

2.The Executive Engineer (O&M West),
Tamil Nadu Electricity Board now TANGEDCO,
Salem – 2.

3.The Assistant Engineer,
Tamil Nadu Electricity Board now TANGEDCO,
110/22, K.V.Sub Station,
Karuppur – 636 012,
Salem District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling



W.P.No.13742 of 2015

for the records relating to the proceeding of the 2nd respondent made in Ku.A.No.Se.Po/E and pa/Mae./Sae/Ka.Mae/ Ka.Udhavi 4/Ko. Thanikkai/14 dated 30.08.2014 quash the same and forbear the respondents from interfering from payment of salary in the scale of 600-100-700-20-1100.

For petitioner : Mr.S.Elamurugan

For respondents : Mr.K.Rajkumar,
Standing Counsel for TANGEDCO

ORDER

The above Writ Petition has been filed challenging the recovery proceedings initiated by the 2nd respondent against the petitioner.

2. The petitioner was working as a Class IV employee with the respondents. TANGEDCO had, in its proceedings dated 02.08.2011, passed orders regarding the fixation of pay scale relating to payment of salary to the sweepers/scavengers belonging to the Class IV division. The above proceedings was passed pursuant to the orders



W.P.No.13742 of 2015

WEB COPY

of this Court dated 18.08.2007 made in W.P.No.10777 of 2003 which was subsequently modified by the Hon'ble Supreme Court vide order dated 26.06.2010 in C.A.No.9438 of 2010. Pursuant to these orders, a Board Meeting was held on 27.07.2011 and in this meeting, about 3,316 number of posts of part time conservancy workers were created with effect from 04.04.2003 and 2,330 number of posts were created with effect from 15.10.2005 for payment of regular scale of pay of Rs.600-10-700-20-1100. The petitioner, therefore, became eligible by reason of the Board meeting to get the regular scale of pay with effect from 01.03.2006 as she came within the 2,330 posts created with effect from 15.10.2005.

3. The learned counsel appearing for the petitioner would submit that pursuant to the above proceedings, the petitioner was paid the arrears of salary with effect from 01.03.2006 which was continued to be paid to her. However, all of a sudden, the second respondent by proceedings dated 30.08.2014 ordered recovery of a



W.P.No.13742 of 2015

WEB COPY

sum of Rs.1,22,420/- based on some audit objections dated 04.08.2014 and in the same proceedings, they had stopped the payment of salary with effect from August 2014.

4. Challenging the same, the petitioner is before this Court.

5. It is the contention of the learned counsel for the petitioner that in the light of the judgment of Hon'ble Supreme Court in the case of *State of Punjab vs. Rafiq Masih* reported in (2015) 4 SCC 334 popularly called as White Washer's Case, the recovery was *per se* illegal.

6. Per contra, the learned Standing Counsel appearing for the respondents would contended that in the instant case, the petitioner has submitted an undertaking and as elucidated in the judgment of the Hon'ble Supreme Court in the case of *High Court of Punjab and Haryana and ors v. Jagdev Singh* reported in (2016) 14 SCC 267



W.P.No.13742 of 2015

WEB COPY

wherein, the Hon'ble Supreme Court, after relying upon the guidelines framed in the White Washer's case, *supra* had stated that the guideline (ii) would not apply to the case of the petitioner therein since the officer has given an undertaking while opting for the revised pay scale. The learned Standing Counsel for TANGEDCO would submit that the same principle is applicable to the case in hand as well and therefore, sought for the dismissal of the Writ Petition.

7. Heard the learned counsel on either side and perused the materials available on record.

8. The entire case rests on whether the respondents have the authority to recover the arrears after a period of three years and after the payment has been made pursuant to the resolution passed by the TANGEDCO.



W.P.No.13742 of 2015

9. The petitioner has placed reliance on the White Washer's case, *supra*, where, the Hon'ble Supreme Court has set out the categories where the recovery by the employer would be impermissible in law. The categories are as follows:

“(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 paymet 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



W.P.No.13742 of 2015

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

Admittedly, the petitioner herein is a Class IV employee who would come within the first category aforesaid.

10. The argument made on behalf of the respondents that once an undertaking is given, then, the recovery cannot be questioned in the light of paragraph 11 of the judgment in Jagdev Singh, *supra*, may not be correct on a reading of this judgment. Paragraph 11 of the said judgment reads as follows:

“11.The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

Proposition (ii) which is referred to in paragraph 11 is the



W.P.No.13742 of 2015

WEB COPY

second category contemplated in the White Washer's case, *supra*, (Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery). Paragraph 11 of the judgment in Jagdev Singh, *supra*, relates only to this category and it is not extended to the other four categories which is clearly evident from the fact that the Supreme Court Judge had clearly held that this second category *viz.*, recovery from retired employees, would not apply to the case that was before him, since an undertaking has been given. The case before the Hon'ble Supreme Court was a case of Additional Civil Judge who was granted the senior scale of pay with an undertaking that any excess payment, if paid, would be refunded to the Government. The person in question was under suspension and subsequently, was compulsorily retired from service. Therefore, the Hon'ble Supreme Court had relied upon the second category set out in the White Washer's case, *supra*, and the same has been rejected by the Hon'ble Supreme Court by the reason given in paragraph 11 of the said judgment. However, in the case on hand, it



W.P.No.13742 of 2015

WEB COPY

is the case of a retired employee belonging to Class IV Division who comes within the first category. Therefore, the argument made on behalf of the respondents cannot be countenanced.

11. Consequently, the impugned order is quashed and the amount, if any, recovered, shall be refunded back to the petitioner and she shall be paid any arrears of salary, if payable.

With the above directions, this Writ Petition is allowed.
Consequently, connected M.P. stands closed. No costs.

18.06.2024

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
ssa



W.P.No.13742 of 2015

WEB COPY

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P.T.ASHA, J.,

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