



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 05.09.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**

**W.P.No.24149 of 20130**

N.Rajendran

... Petitioner

Vs.

Tamil Nadu Electricity Generation  
and Distribution Corporation Ltd.,  
Represented by its Executive Engineer (Operation and Maintenance),  
Nagapattinam Electricity Distribution Circle,  
Nagapattinam.

... Respondent

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the concerned records from the respondent quash the order of the respondent dated 28.5.2013 bearing Ku.Ka.No.396/Se.Pa/E.Pa/Nagai/Ko.Thanikai/13 and the order of respondent dated 14.08.2013 bearing Memo No.1071/EE/O&M/NGT/F. Audit/2013 and consequently direct the respondent to restore the pay scale of the petitioner which petitioner was drawing prior to the impugned orders of the respondent

For Petitioner : Mr.R.Kamatchi Sundaresan

For Respondent : Mr.K.Purushothaman



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W.P.No.24149 of



## **ORDER**

This Writ Petition has been filed challenging the proceedings dated 28.05.2013, whereby the pay of the petitioner is re-fixed and the consequential proceedings dated 14.08.2013 whereby, an amount of Rs.37,103/- is sought to be recovered from future salary of the petitioner in installments.

2. Today, when the matter is taken up for consideration, Mr.R.Kamatchi Sundaresan, learned counsel for the petitioner fairly submitted that the petitioner is not contesting against re-fixation of pay, as done through the impugned proceedings dated 28.05.2013, but the petitioner is aggrieved by the recovery that is sought to be effected through consequential proceedings dated 14.08.2013. It is contended by learned counsel for the petitioner that the petitioner has neither represented the matter nor made any claim for fixation of his pay on earlier occasion, but the respondent authorities fixed the pay on their own and paid certain amounts and the said pay is now re-fixed through proceedings dated 28.05.2013 and thereby, they are trying to recover the so-called excess amount of Rs.37,103/- from the petitioner. He also placed



reliance on a decision of the Hon'ble Apex Court in the case of ***“State of Punjab and others -vs- Rafiq Masih and others”*** reported in **2015 (4) SCC 334.**

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3. This Court has carefully considered the matter and on perusal of the same, this Court is convinced that the issue of recovery is squarely covered by the principles laid down by the Hon'ble Apex Court in ***Rafiq Mashi's case***, wherein the Hon'ble Apex Court held as under:-

*“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:*



WEB COPY

W.P.No.24149 of



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

*(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.”*



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4. It is undisputed that the petitioner belongs to Class III category falling under Clause (ii) of Paragraph No.18 referred to above and therefore, recovery of the so-called excess amount, is liable to be declared as inadmissible under law. Accordingly, the impugned orders are quashed to the extent of ordering recovery of the excess amount paid to the petitioner. However, re-fixation of pay done through proceedings dated 28.05.2013 shall stand.

5. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs. Connected Miscellaneous Petitions, if any shall stand closed.

**05.09.2024**

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

The Executive Engineer (Operation and Maintenance),  
Tamil Nadu Electricity Generation and Distribution Corporation Ltd.,  
Nagapattinam Electricity Distribution Circle,  
Nagapattinam.



WEB COPY

W.P.No.24149 of



**MUMMINENI SUDHEER KUMAR, J.**

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**W.P.No.24149 of 2013**

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