IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.4531, 4533, 4535, 4536, 4538, 4542, 4546,
4548, 4549, 4553, 4544, 4547, 4551, 4556, 4558,
4565, 4581, 4588, 4596, 4599, 4601 of 2024
and
W.M.P.Nos.4907, 4910, 4915, 4916, 4918, 4919, 4921,
4922, 4926, 4927, 4930, 4932, 4933, 4934, 4936, 4937,
4939, 4941, 4943, 4944, 4945, 4946, 4949, 4950, 4954, 4956,
4964, 4966, 4972, 4973, 4994, 4996, 5002, 5004, 5017, 5018,
5029, 5030, 5035, 5037, 5040, 5041 of 2024

W.P.No.4531 of 2024 :-

J.Thirumal ... Petitioner

Vs

1. Tamil Nadu Generation and Distribution
   Corporation (TANGEDCO),
   Rep. by its Chairman cum Managing Director,
   No.144, Anna Salai,
   Chennai – 600 002.

2. Tamil Nadu Generation and Distribution
   Corporation (TANGEDCO)
   Rep. by its Superintendent Engineer,
   Chennai Electricity Distribution Circle North,
   No.144, Anna Salai,
   Chennai – 600 002.

3. Chief Internal Audit Officer,
   Tamil Nadu Generation and Distribution
   Corporation (TANGEDCO),
   No.144, Anna Salai,
   Chennai – 600 002.

4. Tamil Nadu Generation and Distribution
   Corporation (TANGEDCO),
   Rep. by its Executive Engineer,
   Operation and Maintenance,
   Tondiarpet,
   Chennai – 600 081.

5. The Assistant Audit Officer,
   Audit Branch,
   Tamil Nadu Generation and Distribution
   Corporation (TANGEDCO),
   No.144, Anna Salai,
   Chennai – 600 002. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records of the fifth respondent proceedings Audit Slip No.21 dated 19.08.2020 and the proceedings of the fourth respondent in Memo No.EE/O&M/TPT/A.Adm.O/Ads./A1/F-Audit/d.45/2023 dated 03.02.2023 and quash the same and consequently direct the fourth respondent to refun the recovered amount from the petitioner.

In all W.Ps.

For Petitioner : Mr.V.Stalin

For Respondents : Mr.David Sunder Singh
Standing Counsel

COMMON ORDER

All these writ petitions have been filed challenging the Audit Slip passed by the fifth respondent dated 19.08.2020 and the proceedings of the fourth respondent dated 03.02.2023, thereby ordered recovery of excess payment from each employee and accordingly ordered to recover a sum of Rs.5000/- from each of the petitioners from January, 2023.

2. All the petitioners were appointed in the Tamil Nadu Generation and Distribution Corporation (hereinafter referred to as "TANGEDCO") in the year 2012. They were absorbed during the year 2014. At the time of their appointment, they were put on three years training period. In the year 2024, there was a wage revision settlement between the respondents and its workmen. As per the settlement, the training period was reduced from three years to one year. In fact, the same was referred in the proceedings of the respondents dated 23.01.2014. Therefore, the service of the petitioners have to be absorbed in the regular post and in the regular time scale of pay with effect from the year 2013. However, the respondents had absorbed the petitioners in the regular post and granted regular time scale of pay only with effect from 2014.

3. While being so, on 22.10.2018, the Assistant Audit Officer recommended 7% wage revision to the Mazdoor category of workers. On perusal of the recommendations revealed that as per the settlement entered between the respondents and its workmen dated 09.01.2014, under Section 12(3) of the Industrial Dispute Act, all the existing maximum training period of more than one year shall be reduced to one year and on completion of training period, the employees shall be given the applicable time scale of pay for the said post. Accordingly, it was ordered that in respect of Helper (Trainee)/ Office Helper (Trainee)/ Mazdoor (Trainee) be reduced to one year with effect from 09.01.2014. On satisfactory completion of one year training period as on 09.01.2014, they will be absorbed in the regular post and in the regular time scale of pay. Accordingly, the petitioners were given 7% wage revision.

4. While being so, by an order dated 19.08.2020, the Assistant Audit Officer stated that there was incorrect pay fixation and the pay to be regularized to till date. He further stated that employee pay has been simply revised and arrears were paid from January, 2014 to October, 2018 which resulted excess pay and allowance paid to the employee to

the tune of Rs.74,174. The remaining period from October, 2018 to the date of refixing the pay as per audit slip may be calculated by preparing statement. However, the said order was not given effect because of Covid-19. However, from the month of October, 2022 the fourth respondent started deduction of Rs.5,000/- every month. Further sum of Rs.500/- also deducted toward excess pay over and above Rs.74,174/- from the month of October, 2022 to December, 2023.

5. The learned counsel appearing for the petitioners submitted that the petitioners are group IV/D employees. The Hon'ble Supreme Court of India categorically held that no recovery to be made as against Group III/IV or Group C/D employees. Further before passing the impugned order or recovery, they were not issued any show cause notice and not enquiry was conducted. It is clear violation of principles of natural justice.

6. The learned Standing Counsel appearing for the respondents submitted that all the petitioners had knowledge about that they were paying excess payment. Therefore, they had knowledge and it is liable to be recovered from their salary. Accordingly, now recovery order has been

rightly passed by the respondent.

7. Heard the learned counsel appearing on the either side and perused the materials placed before this Court.

8. The Hon'ble Supreme Court of India in the judgment reported in ***(2015) 4 SCC 334*** in the case of ***State of Punjab and ors Vs. Rafiq Masih (White Washer) and ors.***, held as follows :-

> *"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:*
>
> *(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. 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.

(iii) 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.

(iv) 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."

Thus it is clear that recovery from employees belonging to Class-III and Class-IV service or Group 'C' and Group 'D' service shall not be made.

9. Further, it is settled proposition that when such recovery is sought to be made, particularly at the belated stage, the principles of natural justice requires for issuance of prior show cause notice, proposing such a recovery and calling for the objections of the employee. Therefore, in the absence of such show cause notice, the order of recovery cannot be sustained. Further, it is not in dispute that excess payment was made by the respondents relevant to the year from 2014. Further, the alleged excess amount was paid to the petitioners not on their misrepresentation

or production of false records.

10. In view of the above discussions, both the orders passed by the fifth and fourth respondents are liable to be quashed. Accordingly the Audit Slip passed by the fifth respondent dated 19.08.2020 and the proceedings of the fourth respondent dated 03.02.2023, are hereby quashed. The fourth respondent is directed to refund the recovered amount to the petitioner within a period of four weeks from the date of receipt of a copy of this Order.

11. With the above directions, all the writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

02.07.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
rts

To

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