IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.26922 of 2013

Dhangopalsamy ...Petitioner

Vs.

1.The Chief Internal Audit Officer (Pension),
Tamil Nadu Generation and Distribution
Corporation Limited,
Audit Branch,
NPKRR Maaligai (1st Floor)
144, Anna Salai, Chennai – 600 002.

2.The Superintending Engineer,
TANGEDCO,
Erode - 638 009.

3.Office Assistant Administrative Officer,
The Executive Engineer (O & M),
TANGEDCO
Perundurai,
Erode District – 638 052. ...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent in Memo.No.7653/736/Adm/A4/2008 dated 11.12.2008 and 2nd respondent's Memo No.3273/164/Adm.I(4)/2007 dated 02.01.2009 and quash the same and consequently direct the 1st respondent to repay the recovered amount of Rs.14,556/- with interest to the petitioner and also pay pension at the rate of basic pay or Rs.14,450/- with effect from 01.07.2008.

For Petitioner : Mr.M.Mahamani

for J.Pradeep

For Respondents : -No Appearance-

ORDER

Though notice is served on the respondents, no appearance is entered and the names of the respondents are also printed in the cause list.

2. This writ petition has been filed aggrieved by the memo No. 7653/736/Adm/A4/2008 dated 11.12.2008 issued by the 3rd respondent and the consequential memo No.3273/164/Adm.I(4)/2007 dated 02.01.2009 issued by the second respondent.

3. The petitioner herein who worked as Revenue Supervisor (Selection Grade) in the respondent corporation was subsequently promoted to the post of Assessment Officer and then retired from service on 30.06.2008 on attaining the age of superannuation. While he was working as Revenue Supervisor (Selection Grade), his pay that was fixed through office memo No.EE/O&M/Prd/Adm/A4/F.C.No.2154/2006 dated 15.09.2006 was revised and re-fixed through impugned letter dated 14.08.2008 purportedly basing on an audit objection. Consequently, the excess amounts stated to have been paid to the petitioner is sought to be recovered through proceedings dated 02.01.2009.

Aggrieved by the same, the petitioner approached this Court by filing the present writ petition.

4. A perusal of the impugned proceedings itself discloses that the petitioner has retired from service after attaining the age of superannuation on 30.06.2008. The impugned proceedings came to be issued after a period of six months from the date of retirement of the petitioner. The impugned proceedings do not disclose that the petitioner was put on notice before revising and refixing his pay. The petitioner has also made a specific averment in the affidavit filed in support of the writ petition that the impugned proceedings came to be issued without following the principles of natural justice. No counter has been filed by the respondent. In the absence of any counter affidavit, this Court is left with no other option except to accept the averments made in the writ affidavit.

5. In the light of the above, the impugned orders are liable to be set aside on the sole ground of violation of principles of natural justice. As the pay of the petitioner is sought to be revised and certain amounts are proposed to be recovered through the impugned proceedings, such an order cannot be passed without putting the petitioner on notice. Hence, both the impugned orders are

liable to be set aside. Accordingly, both the impugned orders are set aside, leaving it open to the respondents to take appropriate steps in accordance with law.

6. Insofar as the right of the respondents to recover the excess amounts said to have been paid pursuant to earlier fixation of pay without any involvement of petitioner, is well settled by virtue of decision of Hon'ble Supreme Court in ***State of Punjab and Ors. Vs. Rafiq Masih (White Washer)*** (2015) 4 SCC 334, in the said decision the Hon'ble Supreme 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:*
>
> *(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."

7. In the light of the above decision of Hon'ble Supreme Court, recovering any amounts from a person who is about to retire or after retirement of the person is totally impermissible. In the light of the above, the amounts if any

recovered pursuant to the impugned proceedings from the terminal benefits or pension of the petitioner are liable to be refunded to the petitioner. Accordingly, the respondents are directed to refund the amounts if any recovered from the petitioner pursuant to impugned orders as expeditiously as possible at any rate within a period of eight (8) weeks from the date of receipt of copy of this order.

8. In this result, this writ petition stands allowed. No costs.

09.08.2024

Index	:	Yes/No
Speaking Order	:	Yes/No
Neutral Citation Case	:	Yes/No

NST

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MUMMINENI SUDHEER KUMAR,J.

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