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W.P.No.8275 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

W..P.No. 8275 of 2015
M.P. No. 1 and 2 of 2015

K. Dhanalakshmi

... Petitioner

Versus

1.The Chairman,
Tamil Nadu Generation and Distribution Corporation Limited,
144, Anna Salai,
Chennai – 600 002

2.The Executive Engineer,
(Operation and Maintenance),
T.N.E. P &D Board ,
Tiruchengode,
Namakkal District.

3.The Superintending Engineer,
Mettur Electricity Distribution Circle,
Mettur Dam – 1, T.N.E.B,
Salem District.

... Respondents

PRAYER : The Writ Petition is filed under Article 226 of the



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Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records from the 3rd Respondent relating to the order Ka. No. 940-1/SE / MEDC / M / N1.P / 2 / u(1) / Ko. Spl / 2013, dated 31.07.2013 and quash the same and direct the respondents to pay the Petitioner the sum of Rs.2,88,464/- deducted from the pensionary benefits with interest at the rate of 12% with effect from 01/01/2011 till the date of payment and pay the monthly pension without any deduction and award costs.

For Petitioner : M/s. S.Ayyathurai
Mr. A. Ramachandran

For Respondents 1 to 3 :Mr. K. Rajkumar
Standing Counsel

ORDER

Seeking to quash the order passed by the third respondent in and by which the third respondent had directed the deduction of Rs.2,84,383/- alleged to be an excess payment of wages and a sum of Rs.4,081/-alleged to be an excess payment of gratuity from the pensionary benefits payable to the petitioner's late husband, the petitioner is before this Court. She would also seek a consequential relief of direction for payment of the said sum.



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2. The facts are briefly set out herein below.

The petitioner's husband, Krishnan had joined the respondent-Board as a watchman on 07.07.1976 and had retired on 31.12.2010. Thereafter, he had passed away on 08.04.2011. The petitioner would submit that her husband does not owe any amounts to the Government or to the Board. However, though she was entitled to a sum of Rs.6,48,908/- towards her terminal benefits, the petitioner was sanctioned only a sum of Rs.3,61,444/-, after deducting a sum of Rs.2,88,464/- alleged to be an amount paid in excess towards the wages. The petitioner would submit that such recovery from the pension is not to be made even as per the Government instructions, despite which the said sum has been withheld.

3. Though the respondents have not filed a counter statement, the learned counsel for the respondents would submit that right from the



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year 1984, when the petitioner has been appointed as a helper, he has been imposed with various punishments and wage fixation has been wrongly done and it was only during the audit objections that the same has been noted. The learned counsel for the respondents would rely upon a letter dated 07.08.2012 received from the Deputy Chief Internal Audit Officer(Pension), wherein it is stated that on reviewing the service book it is seen that the retired official had been awarded 10 punishments due to unauthorized absence which was subsequently regulated as leave on loss of pay for various spells. It appears that the punishment has been wrongly regulated without taking into account the leave on loss of pay. As a result, excess allowance had been paid to the retired official which has to be recovered. The excess amount was worked out to be a sum of Rs.2,88,464/- and it is this amount that is sought to be recovered. He would also bring to the notice of this Court an undertaking dated 24.07.1993 which is alleged to have been given by the petitioner's late husband. Therefore, he would rely upon the judgment of the Hon'ble Supreme Court reported in **2016 14 SCC 267**



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[High Court of Punjab and Haryana and Others Vs. Jagdev Singh]

wherein the Hon'ble Supreme Court had distinguished the judgment reported in **2015 4 SCC 334 [State of Punjab Vs. Rafiq Masih]** and held that second proposition which had been set out in **Rafiq Masih's** case would not apply in cases, where the higher officials had given an undertaking while opting for a revised scale and are therefore bound by the said undertaking.

4. Heard the learned counsels and perused the materials available on record.

5. The undertaking that has been given by the petitioner's late husband is that in the event of any excess amount being paid due to incorrect fixation of pay, the same could be recovered from the amounts due to him. In the case on hand, it is not a case of excess payment being made on account of incorrect fixation of pay or an excess payment in the light of any discrepancies. On the contrary, the



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recovery is sought to be made on account of the officials not taking note of the punishment imposed upon the employee. In the case of petitioner's husband, the amount that is now sought to be recovered is an amount which has been paid by the respondent-Board totally overlooking the fact that the late petitioner's husband's unauthorized absence had been regulated as leave on loss of pay. Therefore, the reliance on *Jagdev Singh's* case is misplaced. The respondents, without any prior notice or enquiry, sought to recover the money from the pensionary benefits that falls due to the widow of the retired official. The recovery squarely falls within the prohibited categories as set out in *Rafiq Masih's* case.

6. Therefore, the writ petition is allowed and the respondents are directed to pay the amounts that were directed to be recovered from the petitioner's pensionary benefits within a period of 8 weeks from the date of receipt of a copy of this order together with interest 9% per annum from the due date till the date of payment. There shall be no



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order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Internet : Yes
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