# IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.10.2024**

CORAM:

**THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**W.P.Nos.9269, 9277, 9278 & 9282 of 2020**
**and**
**W.M.P.Nos.11311 & 11307 of 2020**

R.Rajasekaran ....Petitioner in W.P.No.9269 of 2020

K.K.Gowrimanavalan ....Petitioner in W.P.No.9277 of 2020

G.Pugalenthi ....Petitioner in W.P.No.9278 of 2020

G.Venkatesh ....Petitioner in W.P.No.9282 of 2020

Vs

1. The Managing Director,
   Tamilnadu Civily Supplies Corporation,
   No.12, Thambusamy Raod,
   Kilpauk, Chennai – 600 010.

2. The Senior Manager – Systems
   Tamilnadu Civil Supplies Corporation,
   No.12, Thambusamy Road,
   Kilpauk, Chennai – 600 010.

3. The Manager – Provident Fund
   Tamilnadu Civil Supplies Corporation,
   No.12, Thambusamy Road,
   Kilpauk, Chennai – 600 010.

4. The Regional Manager,
   Tamilnadu Civil Supplies Corporation,
   Tiruppur.

....Respondents

**COMMON PRAYER:** Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorarified Mandamus call for the records relating to the order passed by the 4th respondent herein in penalty proceeding letter No.A4/1745/2014 dated 15.05.2018, quash the same and direct the 4th respondent to refund the recovered amount.

**In all W.Ps**

For Petitioner : Mr.T.Kalpana Devi
For Respondents : Mr.C.Selvaraj
Panel Counsel for TNCSC

**COMMON ORDER**

The instant Writ Petitions have been filed challenging the recovery notice issued to the petitioners on 15.05.2018 and 12.08.2018.

2. The learned counsel for the petitioners submitted that, petitioners have been serving in the respondent's corporation in various cadres, and that since 2010, new software has been introduced by the Corporation and that disbursement of salary and all type of reductions were duly governed by the computer. It is the further submission of the learned counsel for the petitioners that, except the Head Office, no individuals are supposed to interfere, modify, change, alter, add and correct the software.

3. It is the specific submission of the learned counsel for the

petitioner that, once the name of the individual is entered, then the entire calculation including necessary deductions would be automatically taken care by the Computer. It is in this background, the learned counsel would submit that, the case of the respondent that the petitioner had deliberately and with malafide intention not collected the PF amount from 106 employees, is erroneous and contrary to the factual scenario.

4. The learned counsel would further invite the attention of this Court about the TNCSC Employees Service Regulations, 1989 and by relying Chapter V, would submit that the recovery of any amount from pay is a major penalty, however to impose such penalty, no due procedure have been followed, and that no domestic enquiry was conducted, accordingly would submit that the impugned notice are contrary to law and liable to be quashed. To buttress the contention, they relied upon the following judgements.

*(i)* ***Syed Abdul Qadir and others Vs. State of Bihar and others*** *reported in* ***(2009) 3 SCC 475***

*(ii)* ***State of Punjab and Others Vs. Rafiq Masih (White Washer) and others*** *reported in* ***(2015) 4 SCC 334***

*(iii)* ***Kulwant Singh Gill Vs. State of Punjab*** *reported in* ***1991 Supp(1) SCC 504***

5. Per contra, the learned Standing Counsel would vehemently

submit that, the petitioners and four other employees were working in the regional office of Tirupur, and that it is their responsibility to deduct PF and remit the same before the authority. However, from April 2011 to 2013, out of 270 employees from Tiruppur Region, these petitioners did not deduct pension contribution for 109 employees, and that in view of such failure, the Provident Fund Organization has imposed interest and damages to them in a sum of Rs.9,94,445/-. It is in this background, the learned counsel would submit that the petitioners committed loss to the Corporation, which has to be compensated by the petitioners, as such, there is no infirmity in the present recovery notice.

6. I have given my anxious consideration to the either side submissions.

7. The sum and substance of the petitioners' contention is that, the entire calculation in respect of PF deduction was made by the Computer through Software Programme, and that they have no role, and that there could not have any possibility for manual intervention in tweaking the payment of provident fund of the respective employees. It is the further submission that, if at all there have been any changes, it could have only be done at the Head Office level. He would further invited the attention of

this Court about the Employees Service Regulations, 1989, wherein under Chapter V ( Regulation IV(b)(4)), made it clear that, any order of recovery from pay, for the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of regulations or failure to follow instructions, comes within the category of major penalty.

8. In this case, it is the submission of the respondent that, by not deducting the PF contributions from the respective employee , they have caused loss to the Corporation by their negligent act. This, *prima facie* make it clear that the major penalty has been imposed against the petitioner. The learned counsel for the respondent would fairly concede that the instant impugned order has been passed only on the basis of the explanation given by the respondent and that no domestic enquiry was conducted against them.

9. At this juncture, it is appropriate to refer the judgement relied by the learned counsel for the petitioner. In the case of **Syed Abdul Qadir and others Vs. State of Bihar and others** reported in **(2009) 3 SCC 475,** the Hon'ble Supreme Court has held as follows:

*57. This Court, in a catena of decisions, has granted* *relief against recovery of excess payment of emoluments/allowances if the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.*

*58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases d where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana[1], Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar[3], V. Gangaram v. Director, Col. B.J. Akkara (Retd.) v.*

*Govt. of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bijay Bhadur*

10. In the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and others** reported in **(2015) 4 SCC 334,** the Hon'ble Supreme Court has held as follows:

> *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, 9 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*

11. In the case of **Kulwant Singh Gill Vs. State of Punjab** reported in **1991 Supp(1) SCC 504,** the Hon'ble Supreme Court has held as follows:

*4.......Accordingly it was held that clause (iv) of Rules is applicable to the facts of that case. With respect we are unable to agree with the High Court. If the literal interpretation is adopted the learned Judges may be right to arrive at that conclusion. But if the effect is kept at the back of the mind, it would always be so, the result will be the conclusion as we have arrived at. If the reasoning of the High Court is given acceptance, it would empower the disciplinary authority to impose, under the garb of stop- page of increments, (sic stoppage) of earning future increments in the time scale of pay even permanently without expressly stating so. This preposterous consequence cannot be permitted to be permeated. Rule 5(iv) does not empower the disciplinary authority to impose penalty of withholding increments of pay with cumulative effect except after hold- ing inquiry and following the prescribed procedure. Then the order would be without jurisdiction or authority of law, and it would be per se* *void. Considering from this angle we have no hesitation to hold that the impugned order would come within the meaning of Rule 5(v) of the Rules; it is a major penalty and imposition of the impugned penalty without enquiry is per se illegal.*

12. In the **Kulwant Singh Gill's** case *cited supra,* the Hon'ble Supreme Court has categorically held that, when rule has provided to impose penalty of withholding of increment only after holding an enquiry and following all the due procedures prescribed, the order of recovery without conducting enquiry and not adhering of the prescribed procedure would make the recovery per se illegal.

13. In this case, it is an admitted fact, no enquiry was conducted against the petitioner for the alleged negligence said to have been committed by the petitioner, but in contrast only based upon their mere explanations, such recovery order has been passed. Admittedly procedure contemplated for recovery has not been followed. In such view of the matter, if such recovery is sustained by this Court, then it would cause great hardship to the petitioner and it would make them to lose their opportunity to prove their innocence. Accordingly, this Court would like to interfere with the respective order of recovery, on the sole ground that no established procedure has been followed by the respondent before ordering

recovery. As such the recovery order is in contravention to law and liable to be quashed. But this Court make it clear that the respondent is at liberty to proceed with the petitioners departmentally under applicable regulations and ultimately if the charges of negligence and malafide established, then they may recover the alleged loss from the petitioners concerned.

14. In the result, these Writ Petitions are allowed by quashing the respective recovery order and the respondent is directed to proceed the petitioner in accordance with law departmentally as indicated above. Consequently, connected miscellaneous petitions are closed. No costs.

**28.10.2024**

Index :Yes/No
Neutral Citation : Yes
Speaking order : Yes
Sma

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**C.KUMARAPPAN, J**
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