IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-06-2024

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

W.P. No.28013 of 2014
and M.P.Nos.1 and 2 of 2014

R. Lakshminarayanan ... Petitioner

-vs-

1. Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO),
   Rep. by its Secretary,
   144, Anna Salai, Chennai – 600 002.

2. Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO),
   Rep. by its Superintending Engineer / P&A,
   Mettur Thermal Power Station I,
   Mettur Dam – 636 406. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of CERTIORARI, to call for the records of the 2nd Respondent impugned Memo No.042351/576/Adm.I/A6/F.Doc./2014, dated 07.10.2014 and quash the same.

For Petitioner : Mr.V. Stalin

For Respondents 1 and 2 : M/s. David Sunder Singh

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O R D E R

The Memo No.042351/576/Adm.I/A6/F.Doc./2014, dated 07.10.2014 issued by the 2nd respondent is under challenge.

2. The petitioner submits that he was originally appointed as Helper Trainee on 04.02.1991 and by internal selection he became Tester Chemical on 08.06.1994. He was given selection grade on 09.06.2003. He was promoted as Junior Chemist on 31.03.2006. The Tamil Nadu Electricity Board entered into a settlement with its employees unions as regards the revision of work allocation, staff pattern and revision of wages on 15.10.2005. In pursuance of the same as per the settlement dated 15.10.2005, the Tamil Nadu Electricity Board had implemented the demands made by the unions through B.P.(FB)No.11 (Secretariat Branch) dated 08.02.2006. Subsequently, the Board issued B.P.(Ch)No.107 (Secretariat Branch) dated 16.06.2006 and the scale of pay was revised as regards the post of Tester Chemical with effect from 01.12.2002 by Board Proceedings B.P.No.220 dated 16.10.2005. Already with regard to his pay scale, Audit

Slip was issued and was dropped.

3. Thereafter in 2014, the 2nd respondent once again raised the settled issue and issued the impugned Order dated 07.10.2014, by passing the Order of recovery without following the principles of natural justice. For his request to drop the Order, no reply was passed, hence this writ petition.

4. Heard Mr. V. Stalin, learned counsel appearing for the petitioner and Mr. David Sunder Singh, representing counsel for the respondents.

5. The learned counsel Mr. V. Stalin for the petitioner would vehemently contend that already same issue of fixation of incorrect scale of was raised with respect of the petitioner and it was dropped by an Order dated 30.07.2010. Again the same issue was raised by the Audit Party and an Order of recovery was passed on 07.10.2014, which is impugned herein. He would further contend that the said Audit Slip was not served on him and he was given no opportunity to state his case when the said Order is passed.

6. To buttress his argument, he has placed reliance on the judgment of the Hon'ble Supreme Court in ***State of Punjab and others vs. Rafiq Masih (White washer) and others [(2015) 4 SCC 334]***, and contended that the petitioner, who was in Group C post and law is well settled that the recovery is totally impermissible for the employees belonging to Class-III.

7. In case of recovery of excess amount received by the employees, there were different views expressed in ***Shyam Babu Verma vs. Union of India [(1994) 2 SCC 521]*** and ***Sahib Ram vs. State of Haryana [1995 Supp (1) SCC 18]*** and in ***Chandi Prasad Uniyal vs. State of Uttarakhand [(2012) 8 SCC 417]***, the reference was unnecessary and the matter was sent to the Division Bench for appropriate disposal and it was 'disposed of' by the Division Bench. The Hon'ble Apex Court has fixed certain parameters in case of excess payment made and the recovery thereof. While setting the parameters, the Hon'ble Supreme Court observed that "...wherein employees, who are beneficiaries of wrongful monetory gains at the hands of the employer, may not be compelled to refund the same...the instant benefit cannot be extended to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer;

or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee."

8. It is interesting to note in ***Syed Abdul Qadir vs. State of Bihar [(2009) 3 SCC 475]***, it was concluded by the Hon'ble Apex Court that the issue of recovery revolved on the action of being iniquitous "...when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. It was further held that all arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India." The Hon'ble Supreme Court summarized 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) Recovery in cases where the Court arrives at the conclusion, that recovery is 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."

9. The learned counsel for the respondent Mr. David Sundar Singh would argue that recovery was made prior to the issue of Audit Slip No.01/CAP/MTPS.1 dt. 01.08.2014.

10. From the Audit Slip as mentioned supra, it could be observed that in respect of R. Lakshminarayanan, the selection grade pay fixation as on 09.06.2003 was incorrectly fixed as Rs.6,450/- instead of Rs.6,125/- (Selection grade of pay Rs.5850-200+11050). Thereafter, the excess payment was calculated with effect from 09.06.2003 till 30.06.2014, thereby an amount of Rs.1,32,025/- was ordered to be recovered.

11. The impugned Order came to be passed by the 2nd respondent based on the Audit Slip No.01/CAP/MTPS.1 dt. 01.08.2014 issued in respect of the petitioner. It was subjected to the objection which was raised by the Audit Party stating that his basic pay was fixed at Rs.6,450/- as on 09.06.2003 instead of Rs.6,125/-, thereby the excess amount was calculated and quantified at Rs.1,32,025/- and the order of recovery is passed by the State seeking to recover the salary paid in excess.

12. Admittedly, the petitioner is a Class-III employee, who was working as a Selection Grade Tester Chemical. No doubt, on no fault of the employee, the order of recovery was passed and such recovery definitely would cause hardship to the employee. In this situation, the right of recovery available to the State and the hardship that would be caused to the employee have to be balanced. It is relevant to note that the employee is no way guilty of furnishing any incorrect information or not on account of any misrepresentation made by him. It is profitable to refer to the observations made by the Hon'ble Supreme Court in ***Whitewasher case*** cited supra, wherein, it has been held that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only

be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employers right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made.

13. Reverting back to the impugned order, his pay was fixed in the year 2003 at Rs.6,450/- instead of Rs.6,125/-. After a period of 11 years, the amount paid in excess was sought to be recovered based on Audit Slip from a Class-III employee. In such a view of the matter, I am o fthe considered view that the Order of recovery in the said situations is iniquitous and arbitrary and would cause severe hardship to the employee based on the below said reasons:

> *"(i) Recovery from the employee belonging to Class-III service.*
>
> *(ii) Order of recoveries made for a period in excess of 5 years.*

14. Based on the above said discussions and the law laid down by the Apex Court, I am of the considered opinion that the order of recovery made by the employer is impermissible in law.

15. In the result, the present writ petition stands allowed by quashing the impugned order and the respondents are directed to refund the recovered amount of Rs.1,32,025/- (Rupees One Lakh, Thirty Two Thousand and Twenty Five only). This exercise shall be completed preferably within a period of eight weeks from the date of receipt of the copy of this Order. Consequently, connected miscellaneous petition, if any stands closed. No cost.

12-06-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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R. KALAIMATHI, J.

stn

To

1. Tamil Nadu Generation and Distribution
   Corporation Ltd., (TANGEDCO),
   Rep. by its Secretary,
   144, Anna Salai, Chennai – 600 002.

2. Tamil Nadu Generation and Distribution
   Corporation Ltd., (TANGEDCO),
   Rep. by its Superintending Engineer / P&A,

Mettur Thermal Power Station I,
Mettur Dam – 636 406.

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