IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM

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

W.P.No.20771 of 2024
and
W.M.P. Nos. 22723 and 22726 of 2024

A.Vanitha ... Petitioner

Vs

1. Tamil Nadu Generation and Distribution Corporation Limited,
   Represented by its Chairman and Managing Director,
   TNEB Headquarters Building,
   No. 144, Anna Salai,
   Chennai – 600 002.

2. The Secretary,
   Tamil Nadu Generation and Distribution Corporation Limited,
   Represented by its Chairman and Managing Director,
   TNEB Headquarters Building,
   No. 144, Anna Salai,
   Chennai – 600 002.

3. The Executive Engineer (O & M),
   Tamil Nadu Generation and Distribution Corporation Limited,
   Palladam Electricity Distribution Circle,
   No. 18, Udumalaipet Road,
   Dharapuram.

4. The Assistant Administrative Officer,
O/o. The Executive Engineer ( O & M),
Tamil Nadu Generation and Distribution Corporation Limited,
Palladam Electricity Distribution Circle,
No. 18, Udumalaipet Road,
Dharapuram.

5. The Assistant Accounts Officer,
Revenue Division,
Tamil Nadu Generation and Distribution Corporation Limited,
Palladam Electricity Distribution Circle,
No. 18, Udumalaipet Road,
Dharapuram.

6. The Assistant Audit Officer,
Audit Party No. 2/Coimbatore Region,
Tamil Nadu Generation and Distribution Corporation Limited,
Coimbatore. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the first impugned order passed by the second respondent in proceedings (Per) FB TANGEDCO Proceedings No. 11 (Secretariat Branch) dated 30.03.2020 and the subsequent 2nd impugned order issued by the sixth respondent in Audit Slip No. 01 dated 19.02.2024 and the consequential 3rd impugned order issued in Proceedings Ku. A.No.Se PO/E & Pay/Thaarai/Ni Pi/U1/Ko.Tha.C/A. No: /2024 dated 15.05.2024 and the subsequent 4th impugned order issued by the fourth respondent Se Po//E & Pay/Thaarai/Ni Pi/U Tha 1/Ko.Thanikai/A. No: /2024 dated 30.05.2024 and to quash these orders and to consequently direct the respondents (i) to repay the amount already recovered; (ii) to restore the two incentive increments granted to the petitioner.

For Petitioner : Mr. R.Prem Narayan

For Respondents : Mr. K.Rajkumar,
Standing Counsel (for R1 to R5)

Mr. T.Ravi Kumar (for R6)

**O R D E R**

With the consent of both sides, this Writ Petition has been taken up for disposal at the admission stage itself.

2. The Writ Petition has been filed challenging (i) the order passed by the second respondent in Proceedings (Per) FB TANGEDCO Proceedings No. 11 (Secretariat Branch) dated 30.03.2020; (ii) the subsequent 2nd impugned order issued by the sixth respondent in Audit Slip No. 01 dated 19.02.2024; (iii) the consequential 3rd impugned order issued in Proceedings Ku. A.No.Se PO/E & Pay/Thaarai/Ni Pi/U1/Ko.Tha.C/A. No: /2024 dated 15.05.2024; and (iv) the subsequent 4th impugned order issued

by the fourth respondent Se Po//E & Pay/Thaarai/Ni Pi/U Tha 1/Ko.Thanikai/A. No: /2024 dated 30.05.2024 and to consequently direct the respondents to (i) repay the amount already recovered; and (ii) restore the two incentive increments granted to the petitioner.

3. The petitioner was appointed as Junior Assistant (Accounts) in the office of the Assistant Accounts Officer/Cash/Central Office/Tamil Nadu Generation and Distribution Corporation Limited, Dindugul, by order dated 29.08.2016. Accordingly, the petitioner joined the said post on 26.09.2016. As per Board Proceedings No. 750 (S.B) dated 30.04.1979, two incentive increments were granted to Commerce Graduates working in the Accounting Cadre of the Systems/Circles. Since the petitioner met the requirements, she was issued an order dated 25.11.2017, granting two incentive increments for having passed her B.Com degree, with effect from the date of her initial appointment on 26.09.2016. However, the second respondent issued Board Proceedings No. 11 dated 30.03.2020, cancelling/dispensing with the scheme of advance increments for passing Accountancy Lower Grade/Accountancy Higher Grade/B.Com/M.Com, effective from

25.04.2014, i.e., from the date of issuance of the order prescribing the B.Com degree as a requisite qualification for appointment as Junior Assistant in the Accounts Cadre. Pursuant to the said Board Proceedings, an order was issued for the recovery of the two incentive increments granted as per Board Proceedings No. 750 (S.B) dated 30.04.1979.

4. The learned counsel for the petitioner submitted that the petitioner was granted two incentive increments from the date of her initial appointment as per Board Proceedings No. 750 (S.B) dated 30.04.1979. Without any show-cause notice, suddenly, on the basis of the Audit objection dated 19.02.2024, an order of recovery was passed to recover the two incentive increments granted from the date of her initial appointment. He further submitted that recovery from employees regarding Class-III and Class-IV services is impermissible in law. He also submitted that the Board Proceeding was passed on 30.03.2020, and after a period of four years, the order of recovery was passed, that too on the basis of the Audit Objection.

5. Per contra, the learned Standing Counsel appearing for the first to fifth respondents, on written instructions, states that the Board Proceeding was passed on 30.03.2020, and it is a policy decision; therefore, it cannot be interfered with by this Court unless it was taken without jurisdiction or is contrary to law. He further states that the requisite qualification for appointment as Junior Assistant in the Accounts Cadre has been prescribed as a B.Com degree; therefore, it was decided not to grant two incentive increments for passing the B.Com degree. Further, after the Audit Slip, the petitioner submitted a representation dated 08.05.2024, requesting recovery of the two incentive increments in 10 installments, since she is receiving a salary of Rs. 38,000/- per month. Accordingly, by order dated 15.05.2024, it was ordered to recover a sum of Rs. 1,73,844/- in 10 installments.

6. On perusal of Board Proceedings No. 11 (Secretariat Branch) dated 30.03.2020, it is seen that it was issued based on the fact that, as per Board Proceedings No. 25 dated 24.05.2014, the Tamil Nadu Electricity Board Service Regulations in Annexure-III to Regulation 94, among other things, ordered that, on and from 24.05.2014, candidates must hold B.Com

degree obtained from any university established by law in India and recognized by the University Grants Commission for the purpose of its grant and recognized by the Government of Tamil Nadu for the purpose of appointment, for appointment as Junior Assistant in the Accounts cadre. Therefore, after 24.05.2014, those who hold B.Com degree as the requisite qualification for appointment as Junior Assistant in the Accounts Cadre are not eligible for advance increments. Hence, the respondents decided to cancel/dispense with the scheme of advance increments allowed for passing Accountancy Lower Grade/Accountancy Higher Grade/B.Com/M.Com to the Accounts and Audit employees with effect from 24.05.2014. The grievance of the petitioner is that recovery should not be made from Class-III and Class-IV group employees.

7. On perusal of the records, it reveales that the representation dated 08.05.2024, submitted by the petitioner, sought to recover the incentive increments, which were paid to the petitioner from the date of her initial appointment, in 10 installments. Accordingly, the third respondent passed an order dated 15.05.2024, thereby ordering the recovery of a sum of

Rs. 1,73,844/- in ten installments.

8. The learned counsel for the respondents relied upon the judgement of the Hon'ble Supreme Court of India in the case of ***High Court of Punjab vs. Jagdev Singh,*** reported in 2016 (14) SCC 267, and the relevant portion is extracted hereunder:-

> "***9.*** *The submission of the respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the State. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the respondent was clearly on notice of the fact that a future refixation or revision may warrant an adjustment of the excess payment, if any, made.*
>
> ***10.*** *In State of Punjab v. Rafiq Masih [State of Punjab v. Rafiq Masih, (2015) 4 SCC 334 : (2015) 2 SCC (Civ) 608 : (2015) 2 SCC (L&S) 33] this Court held that while it is not possible to postulate all situations of*

*hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law : (SCC pp. 334-35)*

*(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.*

*(iii) 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.*

*(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.** The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment* *was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."*

9. In view of the above, the principle enunciated in the case of ***State of Punjab vs. Rafiq Masih,*** reported in (2015) 4 SCC 334, cannot apply to the case on hand. The Board Proceedings No. 11 was passed on 30.03.2020. Pursuant to the Board Proceedings, the Audit Objection was raised on 19.02.2024. Further, the petitioner also submitted the said representation to recover the two incentive increments in 10 installments. The Board Proceedings No. 11 dated 30.03.2020 was issued on the basis that the eligibility criteria for appointment as Junior Assistant in Accounts Cadre require candidates to hold B.Com degree for the purpose of appointment from 24.05.2014, as per the amendment made in the Tamil Nadu Electricity Service Regulations in Annexure-III to Regulation 94. However, though the petitioner was appointed as Junior Assistant (Accounts) on 29.08.2016 with B.Com degree, she was granted two incentive increments as per Board Proceedings No. 750 (S.B) dated

30.04.1979. After six years, the second respondent woke up and passed Board Proceedings dated 30.03.2020, thereby dispensing with the advance increment granted for passing Accountancy Lower Grade/Accountancy Higher Grade/B.Com/M.Com, with effect from 24.05.2014, i.e., from the date of the order prescribing the B.Com as the requisite qualification for appointment as Junior Assistant in Accounts Cadre.

10. The second respondent should have passed this Board Proceedings immediately after amending the Tamil Nadu Electricity Service Regulations in Annexure-III to Regulation 94 on 24.05.2014. Whereas, the second respondent issued this Board Proceedings only on 30.03.2020. Therefore, the said Board Proceedings No. 11 dated 30.03.2020 cannot be acted upon with retrospective effect, i.e., from 24.05.2014; it can be applied only from the date of issuance of the Board Proceedings, i.e., 30.03.2020. Hence, the recovery should be made for the payment of two incentive increments only from 30.03.2020.

11. In view of the above facts and circumstances of this case, the

impugned orders dated 30.03.2020, 19.02.2024, 15.05.2024, and 30.05.2024, passed by the second, sixth, third, and fourth respondents, respectively, are quashed. The matter is remanded back to the respondents to calculate the sum of recovery from 30.03.2020 and recover the two incentive increments, which were paid to the petitioner, by 10 installments within a period of two weeks from the date of receipt of a copy of this order.

12. In the result, this Writ Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

24.07.2024

Index:Yes/No
Neutral Citation/Yes/No
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**G.K.ILANTHIRAIYAN, J.**

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