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W.P.No.20947 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM:

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

W.P.No.20947 of 2024
and W.M.P.Nos.22896 and 22897 of 2024

S.Dal Bahadur

... Petitioner

-Vs-

1. The Deputy Secretary / Personnel,
TANGEDCO,
Secretariat Branch, NPKRR Maaligai,
No.144, Anna Salai, Chennai-600 002.
2. The Chief Engineer (Personnel)
TANGEDCO,
Secretariat Branch, NPKRR Maaligai,
No.144, Anna Salai, Chennai-600 002.
3. The Superintending Engineer,
Coimbatore EDC/Metro,
Coimbatore-641 012.
4. The Assistant Audit Officer,
AP-5 Audit Branch,
Coimbatore Region.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari, calling for the entire records pertaining to the order passed by the Superintending Engineer,



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Coimbatore EDC/ metro, Coimbatore-641 012, the 3rd respondent herein vide his proceedings in Ku.Aa.No.007941/789/ NiPi.2/U.1/Ko. Gangman/2023 dated 28.07.2023 and the order passed by the Chief Engineer (Personnel) TANGEDCO, Secretariat branch, the second respondent herein vide his proceedings in Letter no.062973/ G.31/ G.311/ 2023-1 dated 01.12.2023 and the order passed by the Deputy Secretary / Personnel, TANGEDCO, Secretariat, branch the first respondent herein vide his proceedings in Letter No.4521/A16/A161/ 2024-1 dated 13.06.2024 and quash the same as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice.

For Petitioner : Mr.A.R.Suresh
For Respondents : Mr.K.Rajkumar
Standing Counsel

ORDER

This Writ Petition has been filed for the issuance of Writ of Certiorari, calling for the entire records pertaining to the order passed by the Superintending Engineer, Coimbatore EDC/ Metro, Coimbatore-641 012, the 3rd respondent herein vide his proceedings in Ku.Aa.No.007941/789/ NiPi.2/U.1/Ko. Gangman/2023 dated 28.07.2023 and the order passed by the Chief Engineer (Personnel) TANGEDCO, Secretariat branch, the second respondent herein vide his proceedings in Letter no.062973/ G.31/ G.311/ 2023-1 dated 01.12.2023 and the order



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passed by the Deputy Secretary / Personnel, TANGEDCO, Secretariat, branch the first respondent herein vide his proceedings in Letter No.4521/A16/A161/ 2024-1 dated 13.06.2024 and quash the same as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The petitioner was initially appointed as Helper and promoted to the post of Foreman Grade I, on 15.02.2018. In the course of granting promotions, two options to be exercised to the promotees regarding fixation of pay in the promotional post on the date of promotion or on the next date of accrual of annual increment. In the meanwhile, the Wage Revision Settlement was entered into between the respondent and the Trade Union on 22.02.2018, which was given effect to by the Board Proceedings No.9 dated 02.03.2018. The settlement is for the period between 01.12.2015 to 30.11.2019. The settlement will take effect from



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01.12.2015. As per the Board Proceedings No.9 dated 02.03.2018, a Workman who was promoted between 01.12.2015 and 22.02.2018 or promoted prior to 01.12.2015 and opted for fixation of pay on the date of its next increment falling subsequent to 01.12.2015, shall be permitted to revise the earlier option for fixation of pay in the promoted post, within a period of three months from the date of fixation of pay in the revised pay. However, the petitioner failed to opt and accordingly, his pay was fixed. After six years, the petitioner submitted a representation to re-fix his pay and seeks permission to submit re-option form. It is not permissible and as such, the request made by the petitioner was rightly rejected by an order dated 28.07.2023.

4. That apart, even as per the settlement, entered with the Union under Section 12(3) of the Industrial Disputes Act, 1947, dated 22.02.2018, the employees undertakes that any excess payment may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by the employees to the TANGEDCO



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either by adjustment against future payments due to the employee or otherwise without insisting any prior notice.

5. In this regard, the learned counsel for the respondents relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2016 SCC OnLine SC 748**, in the case of **High Court of Punjab and Haryana and others Vs Jagdev Singh**, in which the Hon'ble Supreme Court of India held as follows:-

“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 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 DD.334-355)

(i) Recovery from employees belonging to Class III and Class IV service (or Group C and Group D service).



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(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."*

6. The above judgment is squarely applicable to the case on hand and as such, this Court finds no infirmity or illegality in the orders passed by the respondents and the writ petition is devoid of merits and is liable to be dismissed. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

25.07.2024

Internet: Yes

Index : Yes/No

Neutral Citation: Yes/No

Speaking/Non Speaking order

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