



W.P.No.35249 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.35249 of 2022

P.V.Gopalakrishnan

.. **Petitioner**

Vs.

1.The Superintendent Engineer CED/E/Central
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Chennai – 600 034.

2.The Deputy Chief Internal Audit
Audit Branch BOAB
TANGEDCO
Chennai – 600 002.

3.The Executive Engineer (OSM)/CEDC/Central
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Egmore, Chennai – 600 012.

4.The Executive Engineer (O&M) CEDC Central
No.6, Lafand Street
Anna Salai
Chennai – 2.

.. **Respondents**



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Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records of the first respondent comprised in order dated 18.10.2022 passed in Letter No.277/Adm.II/A1/F.Court Case/2022 quash the same as arbitrary, illegal, unconstitutional and consequently direct the respondents to repay the amount of Rs.38,248/- with interest @ 24 % per annum from 20.02.2021 and revise the pensionary benefits.

For the Petitioner : Mr.S.Ramesh

For the Respondents : Mr.David Sundar Singh

ORDER

Challenging the order dated 18.10.2022 passed by the 1st respondent in Lr.No.277/Adm.II/A1/F.Court Case/2022 the petitioner has filed the present Writ Petition.

2.The petitioner worked as Commercial Inspector under the respondents and retired from service with effect from 28.02.2001. At the verge of his retirement, i.e., on 20.02.2001, the pay which was fixed to him was revised and the excess payment was ordered to be recovered.



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Accordingly, by making deduction of Rs.38248/- from his terminal benefits was ordered.

3. Aggrieved thereby, the petitioner submitted his representation and since no orders were passed, he approached this Court in W.P.No.27110 of 2021. By an order dated 11.07.2022, the representation was directed to be considered by the respondents therein. In compliance of the said order, the respondents have passed the impugned order dated 18.10.2022. The impugned order says that the downward revision has been correctly made and the amount has been recovered long back and therefore, no refund could be made.

4. Heard, Mr.S.Ramesh, learned counsel for the petitioner and Mr.David Sundar Singh, learned counsel appearing for the respondents.

5. The learned counsel for the petitioner would submit that immediately upon the recovery itself, the petitioner has made the



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representation. All along the respondents did not consider the same. After repeated representations, he approached this Court by way of earlier round and this Court directed the respondents to consider the representation of the petitioner, under which now only, the impugned order came to be passed. Therefore, the present Writ Petition has been filed.

6.The learned counsel for the petitioner would rely on the Judgment of the Hon'ble Supreme Court of India in *State of Punjab Vs. Rafiq Masih*¹ and submit that the excess pay was not made pursuant to any representation of the petitioner. Even as per the respondents, it is an erroneous fixation and therefore even assuming that the downward revision of pay is correct, recovery of the said sum is erroneous.

7.The learned counsel appearing on behalf of the respondents would submit that without noting the seniority position that upon voluntary transfer outside the District the petitioner would be kept as the junior most person, the fixation was done and therefore, the fixation was rightly revised

¹ AIR 2015 SC 696

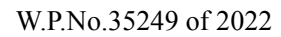


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in the year 2001. The petitioner did not raise a little finger as against the said recovery and kept quite all along and woke up only in the year 2021, by filing a Writ Petition. Belatedly after a period of 24 years, now, the relief cannot be granted to him.

8.I have considered the rival submissions made on either side and perused the material records of the case.

9.On merits it can be seen that the re-fixation of pay was not on any misrepresentation on the part of the petitioner, but mistake of the respondents themselves. In such event, the erroneous re-fixation of pay was done in the year 1990; audit objection was made in the year 1999 and the order of recovery was passed in the year 2001. In such view of the matter, the dictum laid down in the Rafiq Masih's case (cited supra) applies in all force and the recovery cannot be made. To the extent the recovery is made, the proceedings of the respondents are incorrect in law.



11. Therefore, I am of the view that the Writ Petition cannot be dismissed on the ground of delay and laches. However, I hold that the petitioner will not be entitled to any interest whatsoever for the said sum of Rs.38,248/-.

12. In view of the above, the Writ Petition stands disposed of on the following terms:

(i) The impugned order dated 18.10.2022 in



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Lr.No.277/Adm.II/A1/F.Court Case/2022 is quashed, in as much as it relates to recovery of Rs.38,248/- from the petitioner;

(ii) The respondents are directed to refund the sum of Rs.38,248/- to the petitioner, within a period of 12 weeks from the date of receipt of a copy of this order;

(iii) If the respondents fail to refund the same within the period of 12 weeks, then the said sum of Rs.38,248/- shall be paid to the petitioner, with an interest @ 6 % per annum from the date of this order.

(iv) No costs.

01.04.2024

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

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To

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