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W.P.No. 19527 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No. 19527 of 2017

and

W.M.P.No. 21094 of 2017

C. Sengottaiyan

... Petitioner

Vs.

The Superintending Engineer (P & A),
Mettur Thermal Power Station – 1,
Tamil Nadu Electricity Generation and
Distribution Corporation (TANGEDCO),
Mettur Dam – 636 406.

... Respondent

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the respondent in his proceedings in Ku.Aa.No.17562/Vu.Ne.Aa/Ne.Mea./NE.P.5/Vu 3/Ko.Audit/2017 dated 13.07.2017 and quash the same as illegal and arbitrary.

For Petitioner : Mr. K. Sasindran

For Respondent : Mr. David Sundar Singh

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.



2. The case of the petitioner is that he joined in the office of the respondent as Office Helper on 08.01.1982 and thereafter he was promoted as Record Clerk during the year 1987 and subsequently promoted as Junior Assistant on 20.09.1995. Whiles, the respondent issued the impugned order dated 13.07.2017 mentioning that an excess amount of Rs.1,20,431/- has been paid for the period from 01.07.2002 to 31.03.2017. It is further stated that the above said amount was calculated as per audit slip No.6 dated 13.10.2016, and further directed the petitioner to repay the said amount on or before 15.07.2017, otherwise it is informed that the amount would be attached from the monthly salary.

3. The learned counsel for the petitioner submits that without issuing any notice for recovery the impugned order has been passed after a period of 15years. It is further stated that there is no mention about how the excess amount has been paid and no calculation statement has been arrived by the respondent.

4. The learned counsel for the petitioner further contends that there is no misrepresentation on the part of the petitioner for the released excess payment, as such the respondent is not entitled to effect recovery. The learned counsel also submits that the order impugned in this writ petition passed by the respondent without offering any opportunity to the petitioner and as such, it is unsustainable under law.



W.P.No. 19527 of 2017

WEB COPY

5. The Learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Apex Court in *State of Punjab and others v. Rafiq Masih (White Washer) and others* reported in (2015) 4 SCC 334, order dated 02.05.2022 of the Hon'ble Apex Court in *C.A.No.7115 of 2010 [Thomas Daniel v. State of Kerala & Ors]*, order dated 26.07.2023 in *W.P. (MD) No.17154 of 2016* and order dated 08.08.2023 in *W.P.(MD) No. 22395 of 2016* of this Court.

6. No counter affidavit has been filed on behalf of the respondent.

7. The learned standing counsel for the respondent submits that through memorandum and audit slip it came to know that excess amount of Rs.1,20,431/- has been credited to the petitioner during the period from 01.07.2002 to 31.03.2017. As such, the respondent issued impugned order dated 13.07.2017, directing the petitioner to deposit the said amount and also informed that the said amount would be attached from the monthly salary of the petitioner from the month of July 2017. The learned standing counsel contends that there is no illegality or irregularity in passing the impugned order and prayed to dismiss the writ petition.



8. This Court gave anxious consideration to the submissions made by the respective counsels and carefully perused the materials available on record including the reliance placed by the learned counsel for the petitioner.

9. Admittedly, the impugned order dated 13.07.2017 is issued for recovery to the released excess payment of Rs.1,20,431/- which has been credited during the period from 01.07.2002 upto 31.03.2017. It is also an admitted fact that before issuing the impugned order, no notice was issued to the petitioner and no opportunity for personal hearing is accorded. It is settled law without issuing any notice to the aggrieved person passing an order is in violation of principles of natural justice.

10. In the present case, admittedly before passing the impugned order the respondents did not issued show cause notice to the petitioner calling for his explanation, as such in our considered view, the order impugned in this writ petition is passed in violation of principles of natural justice.

11. In fact, on several occasions, identical issue came up for consideration before this Court. By following the proposition of law laid down by the Hon'ble Apex Court in *Rafiq Masih (White Washer) (supra)*, this Court set aside the proceedings of recovery in *W.P.No.6945 of 2022, dated 26.06.2023* and in



W.P.(MD) No.16106 of 2016, dated 20.07.2023. The relevant portion of the judgment of the Hon'ble Apex Court in **Rafiq Masih (White Washer) (supra)**, is extracted hereinunder:

“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, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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 employers right to



W.P.No. 19527 of 2017

recover.”

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12. One of the guidelines as relevant to the present case is that no 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. In the present case, the respondent issued the impugned order for recovery of the released excess payment after fifteen years which is not permissible.

13. This Court in ***W.P.(MD) No.17154 of 2016*** and ***W.P.(MD) No.22395 of 2016***, while dealing the identical issues, has set aside the orders for recovery impugned therein.

14. In ***WP.(MD).No.24951 of 2016***, Madurai Bench of Madras High Court by its order dated 03.10.2023 while dealing with the identical issue has set aside the order of recovery holding it as illegal, arbitrary, unjust and in violation of principles of natural justice.

15. On consideration of the facts and circumstances of the present case and in the light of the authorities cited supra, this Court has no hesitation to hold that the action of the respondent in issuing the impugned order of recovery is illegal,



W.P.No. 19527 of 2017

arbitrary and unjust and in violation of the principles of natural justice and accordingly, the impugned order is hereby set aside.

17. For the above reasons, this Writ petition is allowed.

18. Consequently, connected miscellaneous petition is closed.

19. There shall be no order as to costs.

11.01.2024

Index :Yes/No

Neutral Citation :Yes/No

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To
The Superintending Engineer (P & A),
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WEB COPY



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BATTU DEVANAND, J.

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