



W.P.(MD).Nos.22644 and 20707 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.22644 and 20707 of 2022

and

W.M.P.(MD)Nos.16805 and 15012 of 2022

W.P.(MD)No.22644 of 2022

D.Sukumaran

... Petitioner

Vs.

1. The Superintending Engineer,
O/o.The Superintending Engineer,
TANGEDCO (Distribution),
Sivagangai District.
2. The Executive Engineer,
O/o.the Executive Engineer,
TANGEDCO (Distribution),
Karaikudi,
Sivagangai District.
3. The Assistnat Executive Engineer,
O/o.the Assistant Executive Engineer,
TANGEDCO (Distribution),
Karaikudi,
Sivagangai District.

... Respondents



W.P.(MD).Nos.22644 and 20707 of 2022

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Ka.No.Se.Po./Pa/Kaarai/U.Ni.A/Ni.Mi/Ni.Me./Ni.U.1/Ko./Pani Pathivedu/ A.No.653/2019 dated 23.04.2019 on the file of the Respondent No.2, and quash the same as illegal.

W.P.(MD)No.20707 of 2022

D.Sukumaran

... Petitioner

Vs.

1. The Superintending Engineer,
O/o.The Superintending Engineer,
TANGEDCO (Distribution),
Sivagangai District.
2. The Executive Engineer,
O/o.the Executive Engineer,
TANGEDCO (Distribution),
Karaikudi,
Sivagangai District.
3. The Assistnat Executive Engineer,
O/o.the Assistant Executive Engineer,
TANGEDCO (Distribution),
Karaikudi,
Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records



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pertaining to the impugned order in Ku.No.Se.Po./Pa/Kaarai/U.Ni.A/Ni.Mi/Ni.Me./U.4/A.No.1559/2022, dated 06.08.2022 on the file of the Respondent No.2, as forwarded in Ku.No.U.Se.Po./Na/Kaarai/2.23/Ko.Thani/A.No.401/22, dated 10.08.2022 on the file of the Respondent No.3 and and quash the same as illegal.

In Both Writ Petitions:

For Petitioner : Mr.S.Louis

For Respondents : M/s.M.Parameswari
Standing Counsel

ORDER

W.P.(MD)No.22644 of 2022 has been filed to quash the impugned order dated 23.04.2019 on the file of the Respondent No.2. W.P.(MD).No.20707 of 2022 has been filed to quash the impugned order dated 06.08.2022 on the file of the Respondent No.2, as forwarded on the file of the 3rd respondent, dated 10.08.2022.

2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-



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(i) The petitioner was initially appointed as helper by direct recruitment in T.Nallur, Pudukottai district on 10.04.1987. After regularization and completion of probation, he was promoted as Wireman on 10.04.1992. He was further promoted as Line Inspector on 08.03.2012 and he was thereafter promoted in the year 2020 as Foreman Grade I and still he is continuing as Foreman Grade I. The petitioner is drawing his salary as per the pay scale and revision of pay scale fixed by the respondent corporation as per the board proceedings. Regular annual audit is also done by the Audit Department as to the fixation of pay and pay revision made to the category of employees and if there is incorrect fixation of pay and revision, audit objection would be raised in a year or two.

(ii) In the instant case, an audit objection is said to have been raised by the Internal Audit Department on 16.02.2019 stating that the pay and allowance has been wrongly fixed to the petitioner by the respondent corporation from 01.07.2007. The respondent has alleged that the petitioner had received an alleged excess pay of Rs. 8,99,646/- (Rupees Eight Lakhs Ninety Nine Thousand Six Hundred and Forty Six only). Hence, the second respondent



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issued a common proceedings to the petitioner along with 16 others on 13/14.03.2019 informing that they have received excess pay of Rs. 8,99,646/- (Rupees Eight Lakhs Ninety Nine Thousand Six Hundred and Forty Six only) respectively which would be recovered from the month of March 2019. Since the said order of recovery was passed as against the petitioner without notice, the petitioner challenged the same by filing writ petition in W.P(MD)No. 10089 of 2019 and the same was allowed by this court on 18.02.2022.

(iii) Pursuant to the said order, a show cause notice was issued to the petitioner and an explanation was sought, having rejected the said explanation, the instant impugned order of recovery dated 06.08.2022 came to be passed by the second respondent. Challenging the impugned order dated 06.08.2022 on the file of the second respondent as forwarded by proceedings dated 10.08.2022 on the file of the third respondent, the writ petition in W.P.(MD)No. 20707 of 2022 came to be filed. Thereafter, the writ petitioner also filed W.P.(MD)No. 22644 of 2022, challenging the order of pay revision without any notice or opportunity of hearing dated 23.04.2019 on the file of the second respondent.



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3. Since this court was pleased to pass an order of interim stay, relying upon the Honourable Apex Court's judgment in State of Punjab and Others vs. Rafiq Masih (White Washer) reported in AIR 2015, SC 696, by order dated 01.09.2022, the respondents have filed a vacate stay petition. Relying upon the judgment of the Honourable Apex Court in the case of Chandi Prasad .vs. State of Uttarakhand and Others reported in AIR 2012, Supreme Court 2951, the learned counsel for the respondents pressed for dismissal of the writ petitions.

4. Heard, the learned Counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents. Carefully perused the materials available on record.

5. The petitioner is serving as Foreman Grade I in the respondent corporation. Pursuant to the objection raised by the Internal Audit Department of the Respondent Corporation on 16.02.2019 for the pay and allowance which has been wrongly fixed to the petitioner by the respondent corporation from 01.07.2007, the impugned order of recovery of alleged excess pay of



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Rs. 8,99,646 (Rupees Eight Lakhs Ninety Nine Thousand Six Hundred and Forty Six only) came to be passed by impugned proceedings dated 23.04.2019, 06.08.2022 and 10.08.2023. Obviously, the petitioner belongs to Class IV service and the order of recovery for the excess payment which has been made for a period in excess of 5 years, that is, from 01.07.2007 came to be passed in the year 2019 and thereafter. Such an exercise is not permissible in view of the judgment of the Honourable Apex Court in the Whitewasher's case reported in (2015) 4 SCC 334 and the relevant portion of the said judgment to the facts and circumstances of this case is extracted as follows:

“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 hereinabove, we may, as a ready reference, summarise 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).



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(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) 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. Fully fortified by the mandates of the above judgment, observing that the present cases would undisputedly fall within the first and third categories delineated in the aforesaid judgment, I have no hesitation to quash the impugned orders dated 23.04.2019 and 06.08.2022 vide proceedings dated 10.08.2022. Hence, the impugned orders are hereby set aside.



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7. Accordingly, these Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed

12.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

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L.VICTORIA GOWRI, J.

Sml

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