



WP(MD). No.21717 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 08.01.2025

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THE HONOURABLE MR. JUSTICE B.PUGALENDHI

WP(MD)No.21717 of 2019

and

WMP(MD)Nos.18450 of 2019, 3494 of 2021 and 16472 of 2024

V.P.Rajeshkannan

... Petitioner

versus

1. The Chief Engineer (Personnel),
TANGEDCO,
8th Floor, NPKRR Maligai,
144, Anna Salai,
Chennai-2.

2. The Chief Engineer-in-charge (Distribution),
O/o. The Chief Engineer (Distribution),
TANGEDCO,
Madurai Region,
K.Pudur,
Madurai – 625 007.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the records pertaining to the impugned order in Ku.Aa.No.10592/757/Tha.Po/Pa/Madurai/MuNiA/NiPi.A/A2/2019 dated 24.09.2019 on the file of respondent No.2 and quash the same as illegal.



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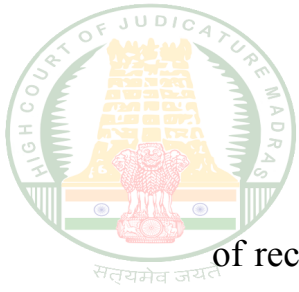
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For Petitioner : Mr.Karthick,
for M/s.Lajapathi Roy & Association
For Respondents : Mr.B.Ramanathan,
Standing Counsel

ORDER

The petitioner, who is working as an Administrative Assistant in TANGEDCO, Madurai, has been issued with an order of recovery, dated 24.09.2019 that his scale of pay in the cadre of Assessor has been wrongly fixed and therefore, he was directed to remit back a sum of Rs. 4,14,087/- to the respondent. Challenging the same, the petitioner has approached this Court in the year 2019.

2. The learned counsel appearing for the petitioner submits that the petitioner was appointed as an Assessor on compassionate ground in the respondent Board on 18.04.2009. Thereafter, he was promoted as Administrative Assistant on 06.12.2013. Subsequently, he was issued with a communication in Ref.Ku.No.4623/424/ThaPo/Pa/Mathu/Ni.Pi./A Pirivu/A2/2017, dated 19.05.2018 stating that instead of appointing him in the post of "Assessor -II", he was appointed in the post of "Assessor" and the scale of pay has also been fixed accordingly. Therefore, an order



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of recovery has been passed, directing the petitioner to remit back a sum of Rs.4,14,087/- to the respondent Board. The learned counsel further submits that there is no misrepresentation/mistake on the part of the petitioner in fixation of cadre and salary. By referring to the ratio laid down by the Honourable Supreme Court in *Whitewasher's* case, reported in **2015 AIR SCW 501**, the learned counsel submits that the petitioner belongs to Class III service as per Tamil Nadu Electricity Service Regulation and therefore, the order of recovery is liable to be set aside.

3. It is an admitted case of the respondents that initially the petitioner was appointed as an Assessor, instead of Assessor Grade II and accordingly, the scale of pay has also been wrongly fixed to this petitioner in the cadre of Assessor, which needs to be recovered as the petitioner is not entitled for the excess salary.

4. The learned counsel for the petitioner by referring to his reply submits that there is no misrepresentation on the part of this petitioner. He is a Class III employee, which will come under the category of Class C. Therefore, according to him, the order of recovery issued as



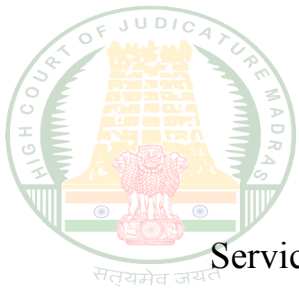
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against the petitioner is not proper, as per the ratio laid down by the Honourable Supreme Court in *White Washer's* case, reported in **2015 AIR SCW 501**.

4. This Court considered the rival submissions made and also perused the materials placed on record.

5. This Court directed the learned Standing Counsel for the respondent TANGEDCO to ascertain the cadre of the petitioner, by way of written instructions. The Chief Engineer, Distribution, Madurai has clarified that the petitioner belongs to Class III service, as per Tamil Nadu Electricity Board Service Regulation Annexure II of 93 Division VI-B Administration Cadre.

6. Admittedly, the petitioner is a Class III employee, which falls under Class-C of Government service, working in TANGEDCO and he has been issued with an order of recovery. It is ascertained from the Board that the petitioner belongs to Class III service, as per TNEB



Service Regulation Annexure II of 93 Division VII-B Administration

Cadre. The Honourable Supreme Court in ***State of Punjab and others etc., V.Rafiq Mah (White Washer's case)*** reported in ***AIR 2015 C 696***

has passed an order and the relevant paragraphs are extracted as under:

12. 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.



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(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.*

7. In view of the ratio laid down by the Honourable Supreme Court as stated supra, the impugned order of recovery dated 24.09.2019 issued by the 2nd respondent is liable to be set aside.

8. Accordingly, this writ petition is allowed and the impugned order of recovery dated 24.09.2019 issued by the 2nd respondent is hereby set aside. No costs. Consequently, connected miscellaneous petitions are closed.

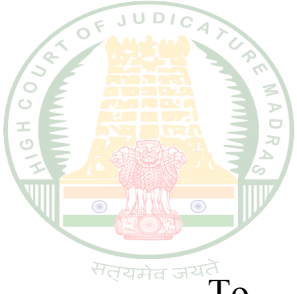
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NCC : Yes / No.

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