



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 22.09.2016
Order pronounced on : 03.11.2016

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C O R A M

THE HONOURABLE DR.JUSTICE S.VIMALA

Writ Petition (MD) No.17542 of 2016
and
WMP(MD) No.12666 of 2016

E.Kalimuthu

.. Petitioner

Vs.

1.The Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Represented by its Managing Director,
Madurai.

2.The General Manager,
The Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Dindigul Region, Dindigul.

.. Respondents

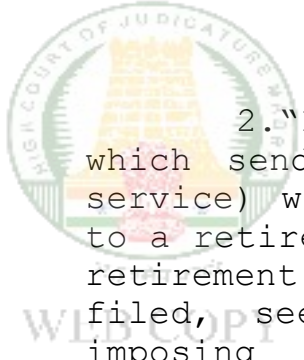
Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration declaring the action of the respondent in imposing a recovery of Rs.11,655/- on the petitioner towards unaffected increment cut and recovering the said amount from his terminal benefits payable to him including leave salary of Rs.1,46,181/- without any recovery but with interest at the rate of 18% per annum payable to him from his date of retirement to till the date of actual payment.

For petitioner ... Mr.A.Rahul
For R1 to R2 ... Mr.A.Jeyaram

O R D E R

Towards non-implemented punishment of increment cuts, whether recovery can be effected from the retirement benefits of the employee, after retirement on account of superannuation, is the issue canvassed, in this writ petition.

The petitioner served as Driver under the first respondent corporation with effect from 01.08.1983 and he retired from service with effect from 29.02.2012 and the petitioner challenges the recovery towards non-implemented punishment of increment cuts.



2. "Increment Cut" - the two diametrically opposite words, which send shock waves even to an earning employee (while in service) would certainly create and cause insurmountable problems to a retired employee, when the increment cut is effected from the retirement dues - so contending, this writ Petition has been filed, seeking to declare the action of the respondents in imposing recovery of Rs.11,655/- towards non-implemented punishment of increment cuts and recovering the said amount from the terminal benefits as illegal and consequently direct the respondents to settle and pay the amount due with interest 18% p.a. from the date of retirement till the date of payment.

3. When there is no certified standing orders and where there is only a model standing order, under which, there is no provision (in the model standing order) for recovery of amount towards non-implemented punishment of increment cut, the recovery is illegal, is the specific contention of the petitioner.

4. The pertinent contention raised by the petitioner is that the Disciplinary Authority should not have lost the sight of impending retirement at the time of passing the order, imposing the punishment of increment cut, and for the mistake committed by the Disciplinary Authority, the petitioner cannot be put to loss and inconvenience.

5. Learned counsel for the petitioner relied upon the following judgments in order to substantiate those contentions:-

i) W.P.(MD) No.9889 of 2007 (N.Jothi vs. Tamil Nadu State Corporation, Kumbakonam)

When the management ordered recovery of Rs.49,450/- from the retirement benefit of a Conductor towards non implemented punishment of increment cut, the impugned order is perverse and it is an outcome of imagination of a sick mind.

ii) [Petchimuthu vs. Managing Director, Tamil Nadu State Transport Corporation, Madurai] [W.P.(MD) No.12824 of 2012]

When an order of penalty was passed, it is the duty of a Disciplinary Authority to see how far it could be enforced.

iii) These two judgments were followed in W.P.(MD) Nos.12705, 13072, 13984 of 2010 by the order dated 01.08.2013 and the Writ Appeal filed by the Transport Corporation in W.A.(MD) No.52 to 54 of 2015, was dismissed on 24.02.2015.

iv) The order passed in W.P.(MD) No.9889 of 2007 and 12834 of 2012 have been complied with and no appeal has been preferred. These decisions are applicable to the facts of the case.

6. Learned counsel for the respondent relied upon decisions of this Court passed in W.P.(MD) No.11967 of 2012, in which, the judgments passed by this Court in W.P.(MD) No.9889 of 2007 (N.Jothi vs. Tamil Nadu State Corporation, Kumbakonam) and W.P.(MD)



8.1. This exercise has been done by the Hon'ble Supreme Court in the decision reported in (2015) 4 SCC 334 (State of Punjab and others vs. Rafiq Masih) in which it has been held that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. The recoveries would be impermissible in the following cases:

(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.

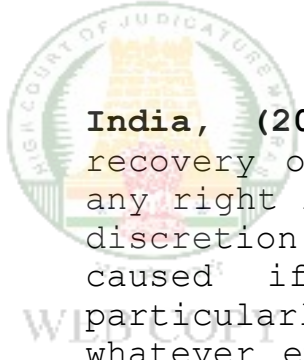
(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(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 employer's right to recover.

8.2. It is also pointed out that even though it is applicable only to Government employees, the constitutional philosophy underlying the decision should be made applicable to the petitioners and it should be declared that recoveries are illegal.

9. No doubt, the employee, who was found guilty and who was ordered to pay penalty has no legal right to say that there is no liability to pay. But, he can only plead for inability because of the impending and compelling circumstances, which would prevent him from paying the penalty. The lapses, missing fore-thought, non consideration of the consequences of effecting recovery after retirement on the part of the employer should be considered by the Court in deciding whether to grant relief to the employee or to the employer.

In a case where there had been excess payment while the employee was in service and when that was sought to be recovered, the Hon'ble Supreme Court in **Col. B.J. Akkara v. Government of**



India, (2006) 11 SCC 709, held that such relief, restraining recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it."

10. When this decision has been rendered, though while effecting recovery of excess payment already paid, especially with reference to employees in the lower rungs of society, the underlying principles has to be adopted and molded in case of recovery of the amount towards recovery of penalty after retirement. After retirement excepting age, many things diminishes by and large, i.e., the earnings, the respect, the health, the ability to do physical work, withstanding capacity and consequently the mental health. Parallely in case of middle class/lower class families, the commitment towards the education, marriage, establishment of basic amenities to children, unforeseen medical expenses etc. increases. The future plans are made not only by the retired employee, but also by the members of the entire family, well in advance anticipating the receipt of retirement benefits. When there is an obstruction, that brings more disrespect to the retired employee.

In case of non recovery of penalty, the **employer** is not put into any loss, because it is not even an excess payment already made and not even an anticipated income that is lost. In any event, it is possible for a omnipotent Corporation to adjust its financial resources, which is not possible in the case of an individual employee.

11. In other words, this Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous and harsh to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

12. It is made clear that this finding should not be mistaken as a licence for the employees to commit mistakes and to escape from the penalty later on. The right to interpretation is that it should be construed as an eye opener to the Disciplinary Authority to impose appropriate punishment at the appropriate time, failing which, the employer loses the right to recover the amount.

13. In the result, the impugned order of recovery is set aside and thus, this Writ Petition is allowed. No costs. The



respondent Transport Corporation is directed to settle all the terminal benefits of the petitioner without making any recovery within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions is closed.

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Sd/-
Assistant Registrar(crl side)

/True copy/

Sub Assistant Registrar

To

1.The Managing Director,
The Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Madurai.

2.The General Manager,
The Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Dindigul Region, Dindigul.

+1cc to Mr.A.Rahul, Advocate SR.No.65706

rj2
sm:SKS-RR:09/12/2016:6P/4C

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03.11.2016