BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) No.30 of 2011

S.Selvaraj ... Petitioner

-vs-

1.The Management of
Tamilnadu State Transport
Corporation (Kumbakonam) Ltd.,
Kumbakonam Region
rep.by its Managing Director
Kumbakonam

2.The Administrator
Tamil Nadu State Employees
Pension Fund Trust
Thiruvalluvar Illam
Anna Salai, Chennai-2 ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of mandamus to direct the first respondent to pay the petitioner all his terminal benefits with 16% interest and further directing the respondents to pay him pension under TNSTCEPF Rules with arrears from 01.07.2010 with 16% interest.

For Petitioner : Mr.S.Arunachalam

For Respondents : Mr.S.Bhaskaran, Standing Counsel for R1
Mr.A.P.Muthupandian for R2

O R D E R

The prayer in this writ petition is for issuance of a writ of mandamus to direct the first respondent to pay the terminal benefits with 16% interest per annum and pension payable under T.N.S.T.C., E.P.F., Rules with arrears from 01.07.2010 till the date of payment, together with 16% interest per annum to the petitioner.

2. The petitioner was employed as a Driver in the first respondent Transport Corporation. He had put in 29 years of service and retired on 30.06.2010 on reaching the age of superannuation. His service was very much appreciated and after

his retirement, the retirement benefits due to him were not given. On enquiry, he was informed that he should give an undertaking accepting the deduction of a sum of Rs.1,44,202/- from the terminal benefits and that he would not file case challenging the said deduction before any Court. However, the respondent Management refused to give the break-up details for the said deduction. Aggrieved by the action of the respondent Management, the petitioner is before this Court.

3. The first respondent has filed a counter affidavit, wherein the break-up details for the deduction of the sum of Rs.1,44,202/- has been given as detailed hereunder:

1. Retirement Benefits Scheme	: Rs.	200.00
2. EXG Conti.	: Rs.	40.00
3. Tamil Nadu Corporation Employees Medical Scheme (TCEMS)	: Rs.	100.00
4. CESS	: Rs.	200.00
5. Marriage Advance Amount	: Rs.	16,588.50
6. Grocery purchased from the Society	: Rs.	1,111.00
7. Clothes purchased from the Society	: Rs.	4,974.00
8. Co-optex Loan	: Rs.	2,000.00
9. Labour Welfare Fund	: Rs.	7.00
10. I.R. Pay Cut Recovery	: Rs.	87.50
11. Fine amount during the course of service	: Rs.	100.00
12. Non-implementation of increment cut awarded to the petitioner in various disciplinary proceedings	: Rs.	1,20,062.67
Total	Rs.	1,45,470.67
LESS : Leave Salary to be paid to the petitioner	: Rs.	1,268.24
Balance amount to be paid by the petitioner	: Rs.	1,44,202.43

4. On perusal, it is seen that Item No.12 of the recovery was in respect of non-implementation of increment cut awarded to the petitioner in various disciplinary proceedings. However, the first respondent has not given a clear cut details of the punishment imposed and the reasons for non-recovery of those items in time.

5. The respondent has placed reliance upon the Annexure-V of the common Service Rules, wherein under the head of Discipline and Appeal Rules, it has been envisaged that "For Major penalties (d) withholding of increments of pay with or without cumulative effect (e) recovery from pay to the extent necessary monetary value equivalent to the amount of increments ordered to be withheld where such an order cannot be given effect to." Therefore, it is the contention of the first respondent that the increment cut, which could not be implemented, can be withheld from the terminal

benefits and hence, the writ petition is liable to be dismissed.

6. Heard both sides and perused the materials produced.

7. The learned counsel for appearing for the petitioner submitted that the increment cut should have been implemented while the petitioner was in service. The Management was very much aware of the impending retirement of the petitioner. Once the Management could not implement the increment cut while the petitioner was in service, they are not entitled to recover it from the terminal benefits after his retirement. The service of the persons like the petitioner herein are governed by the Standing Orders issued under the Industrial Employment (Standing Orders) Act. As stated in the counter affidavit, increment cut can be converted into recovery of the amount equivalent to the same, but it cannot be enforced in sofar as the retired employees are concerned. The order of the first respondent in jmBghf/Fk;g/eph;8/gx/209-09/2010-6, dated 21.06.2010, has permitted many employees to retire from service including the petitioner herein and appreciated their services and also ordered to pay various benefits. But, there is no specific reservation that the amount of non-implementation of increment would be converted into monetary value to be recovered from the terminal benefits. Without any reservation, the amount is sought to be recovered.

8. The learned counsel for the petitioner, in support of his contentions, has placed reliance upon the unreported decisions of this Court in **M.Petchimuthu vs. The Managing Director and others [W.P.(MD) No.12824 of 2012]** and **Sathiaseelan and others vs. Tamil Nadu State Transport Corporation and others [W.P.(MD) Nos.12705, 13072 & 13984 of 2012]**, wherein, since the recovery of penalty was not converted into one of recovery of the equivalent amount in the order of retirement, recovery without any order, which was sought to be effected, was declared as illegal and therefore, a direction was issued to the respondents therein to settle all the benefits to the petitioner therein.

9. On considering the identical nature of the facts of this case, this Court is of the opinion that the deduction of Rs.1,20,062.67 towards non-implementation of increment cut awarded to the petitioner in various disciplinary proceedings, without any specific detail, is patently illegal and that can not be recovered from the terminal benefits. In sofar as Item Nos.1 to 11 in the break-up details given by the first respondent in Para No.5 of the counter affidavit are concerned, the learned counsel for the petitioner has filed a rejoinder stating that he is ready to accept the deductions under those heads, except the deduction of Rs.1,20,062.67 under Item No.12. The rejoinder of the petitioner is taken on file.

10. In view of the above, the writ petition is disposed of with a direction to the respondents to pay the terminal benefits and pension payable under T.N.S.T.C., E.P.F., Rules, with arrears from 01.07.2010 till the date of payment, to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(writs)

/True Copy/

Sub Assistant Registrar

To:
1.The Management of
Tamilnadu State Transport
Corporation (Kumbakonam) Ltd.,
Kumbakonam Region,
rep.by its Managing Director,
Kumbakonam.

2.The Administrator,
Tamil Nadu State Employees
Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai, Chennai-2.

+1cc to Mr.S.Baskaran, Advocate SR.No.68299
+1cc to Mr.S.Arunachalam, Advocate SR.No.69217

krk
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