BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.02.2016
CORAM:

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

W.P.(MD)No.3251 of 2016
and
WMP(MD)No.2841 o 2016

K.Paramanandam, ... Petitioner

Vs.

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

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

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the action of the respondents in imposing recovery of Rs.5,877/- on the petitioner towards non-implemented punishment of increment cuts recovering the said amount from his terminal benefits namely Cholan Employees Security Scheme Amount, as illegal, arbitrary and consequently direct the respondents to settle and pay the petitioner the gratuity and all other attendant retirement benefits without making any recovery and with interest at the rate of 18% per annum playable to the petitioner from his date of retirement to till the date of actual payment.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.D.Sivaraman

O R D E R

This Writ Petition has been filed seeking issuance of a Writ of Declaration, declaring the action of the respondents in imposing recovery of Rs.5,877/- on the petitioner towards non-implemented punishment of increment cuts recovering the said amount from his terminal benefits namely Cholan Employees Security Scheme amount, as illegal, arbitrary and consequently, direct the respondents to settle and pay the petitioner the gratuity and all other attendant retirement benefits without making any recovery and with interest at the rate of 18% per annum playable to the petitioner from his date of retirement to till the date of actual payment.

2. The case of the petitioner is that after retirement of the petitioner, the 2nd respondent served the impugned proceedings to the petitioner informing that a sum of Rs.5,877/- has to be recovered from him towards non-implemented punishment of increment cuts. Further, the 2nd respondent has duducted the above said recovery amount from his terminal benefits namely 'Cholan Employees Security Scheme' amount of Rs.27,000/- and the respondents are liable to play the gratuity of Rs.3,19,140/-. He would further submit that though the petitioner retired from service with effect from 31.05.2013, the respondents have not settled his retirement benefits including gratuity. There is no provision in the model standing order for recovery of amount towards non implement punishments' such as increment cut and pay reduction etc.

3. The respondents would contend that the action of the respondents in recovering a sum of Rs.5,877/- from his terminal benefits towards non-implemented punishment of increment cut is perfectly justified and that the respondent Corporation is governed by Common Service Rules and Certified Standing Order, namely, Standing Orders for the employees of the Cholan Roadways Corporation Limited, Kumbakonam as certified by the Appellate Authority under Industrial Employment (Standing Orders) Act, 1946, which came into effect from 30.11.1976; that the Common Service Rules and the Certified Standing Orders have provisions for taking disciplinary action against employees for misconducts and punishments that could be imposed for such misconducts. It is stated by the respondents that the petitioner has not challenged the Service Rules or Standing Orders and Rule No.25(1)(iv)(b), which empowers the Management to make recovery on the punishment imposed. It is further stated that in the judgment relied upon by the petitioner dated 07.02.2013 passed in W.P.(MD) No.11697 of 2012, this Court has considered various judgments and distinguished the same, holding that the rule position was not considered in those decisions and upheld the powers of the Transport Corporations to make recovery of amount equivalent to that of penalty. Thus, it is pleaded by the respondents that the action of the respondents in deducing the amount toward non-implemented increment cut is perfectly valid and the same need not be interfered with.

4. Heard the learned counsel on either side.

5. This Court, in similar circumstances, in W.P.(MD) Nos.6902 of 2014 and 23615 of 2016, had held as follows:-

"8. With regard to imposition of punishment, the petitioner is a workman under the Industrial Disputes Act, 1947 and if the petitioner is really aggrieved, he ought to have raised disputed through Union and get the punishment order set aside. Writ petition is not an alternative remedy and this Court, under Article 226 of the Constitution of India cannot re-appreciate the evidence and come to a different conclusion. In the case of State of Andhra P radesh v. S.Sree Rama Rao, reported in AIR 1963 SC 1723, the Honble Apex Court had held as under:

"The departmental authorities are the sole judges of facts, and if there be some legally admissible evidence, on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a Writ under Article 226 of the Constitution, if the enquiry has otherwise been properly held. Here, in the instant case, no document which has been created behind the back of the applicant, has been relied upon by the Enquiry officer, and all the documents relied upon were the creation of the applicant himself, under his own handwriting. This aspect has been appreciated by the Honble High Court also while setting aside his acquittal by the trial Court. Therefore, it cannot be held by any stretch of imagination that the findings of the Enquiry officer, Disciplinary Authority and the Appellate Authority, are not based on legally admissible evidence, and that no reasonable person could have arrived at on those findings on the basis of the material available. It is not as if any deposition of a witness had been recorded by the Enquiry Officer in the absence of the delinquent public servant, who is the applicant before us, or a copy thereof has not been given to him or a witness has been produced, and an opportunity has not been given to him, to cross examine that witness.

9. In yet another judgment, a Three-Judges Bench of the Honble Apex Court in the case of B.C. Chaturvedi vs. Union of India and others, reported in AIR 1996 SC 484 has been pleased to hold as follows:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the

Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

10. Therefore, this Court is of the view that the punishment imposed by the Management is proportionate to the gravity of the misconduct committed by the petitioner and it does not require any interference by this Court.

11. The next issue is as to whether having allowed the petitioner to go on VRS, the Management is justified in recovering amount under the head non-implemented punishment of increment cut from the petitioner. It is not in dispute that the Service Rules or Standings Orders have not been challenged. The respondents relied on Clause 25 of the Certified Standing Orders applicable to the respondent corporation, which is reproduced hereunder:

"25. Punishment for Misconduct:

"(1)(iv)(b) - Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increment ordered to be withheld, where such an order cannot be given effect to."

12. According to the petitioner, the respondents have already imposed punishment under Clause 25 (iii) and therefore, they cannot again invoke Clause 25(iv)(b) to recover the amount. Though the argument of the petitioner appears to be sound, when seen in depth, it has no logic, simply because, if a person is imposed with punishment after the domestic enquiry for some misconduct, it is open to him to challenge the same by raising dispute through Union and admittedly, the petitioner has not done so. Where there is an imposition of punishment on an employee, who is going to retire from service shortly, certainly, the Management will have to make recovery, otherwise, the guilty person would escape without any punishment. The punishment mentioned under Clause 25 (iii) and (iv) is interchangeable and the Management will have to first state the punishment as per Clause 25 (iii) and thereafter, for want of recovery period, they have to invoke Clause 25(iv), but in this case, it is Clause 25 (1)(iv)(b). In case, an employee dies prior to issuance of order of stoppage of increment, certainly, terminal benefits have to be given to the family members and only the monetary benefits need to be adjusted and paid. The purpose of Standing Orders is to give effect to the clause in the Standing Orders, including the punishment, where charges are proved and not otherwise.

13. The contention of the petitioner that Common Service Rules cannot be applicable to the facts of this case is perfectly correct, as the reading of Service Rules / Discipline & Appeal Rules [Rule 4(f)] is very clear that it will not apply to a workman, as defined under the Industrial Disputes Act, 1947. Since the petitioner is governed by the Standing Orders, the Service Rules / Discipline & Appeal Rules for imposing minor or major penalties is not applicable to the facts of this case. Though much reliance is placed on Rule 4 (e), as Service Rules / Discipline & Appeal Rules does not apply to this case, there is no need to harp upon this point. The further contention of the petitioner is that the word "pay" used under Clause 25(1)(iv)(b) denotes only monthly pay and the recovery can be effected only from the wages. Though the said argument looks attractive at first blush, it is not so, as it is to be remembered that the word "pay" includes wages, money due to the employee out of the services rendered, except the one claimed and protected under the provisions of Payment of Gratuity Act, 1972. The punishment imposed under Clause 25(1) (iii) and 25 (1)(iv)(b) are independent to each other and therefore, the contention that Clause 25 (1)(iii) has been modified to Clause 25(1)(iv)(b) cannot be accepted and the period of punishment is to recover the amount for the proved misconduct.

14. In the decision relied upon by the respondents in the case of *P.Ramasamy vs. The Tamil Nadu State Transport Corporation (Coimbatore, Ltd., Coimbatore and others [W.P.11697 of 2012] decided on 07.02.2013*, it has been held that by G.O.Ms.No.1373, Transport Department dated 02.12.1985, common service rules are applicable as per the decision of the Board of Directors in their meeting held on 19.04.1986. However, this judgment is not applicable to the present case and even assuming for a moment that the said G.O. G.O.Ms.No.1373, Transport Department dated 02.12.1985 is contrary to the Certified Standing Orders, the Certified Standing Orders would prevail and the management is empowered to initiate any action in terms of the Certified Standing Orders. As rightly pointed out by the respondents, depending upon the clause stipulated in the Standing Orders, a case needs to be considered.

15. Even though it has been contended by the respondents that the relief sought in this writ petition is not maintainable, this Court is unable to accept the said contention, as the Management has taken a decision to recover the amount and the respondent Corporation is a State within the meaning of Article 12 of the Constitution of India and the employees working under the respondent Corporation can seek the action of the Management to be declared as bad and null and void. But, however, in this case, there is no illegality in the decision taken by the Management to recover the amount from the petitioner.

16. The judgments relied upon by the petitioner are not applicable to the facts of this case, as those judgments are covered by a different set of Standing Orders and in any event, from the judgment rendered by my brother Justice K.Chandru (referred to supra), it is clear on this aspect. The contention of the petitioner that other employees, who were similarly placed, were already granted benefits, cannot be accepted, as two wrongs will not make a thing right.

17. In fine, both these Writ Petitions fail and the same are dismissed. The Management is entitled to deduct the amount from the terminal benefits, except from the amounts like gratuity, which are protected by Statute like Payment of Gratuity Act etc. In fine, both these Writ Petitions fail and the same are dismissed. The Management is entitled to deduct the amount from the terminal benefits, except from the amounts like gratuity, which are protected by Statute like Payment of Gratuity

Act etc. The Management is directed to release the terminal benefits after adjusting the amount imposed towards non-implemented punishment of increment cut *within a period of two months from the date of receipt of a copy of this order* and the gratuity shall be released in *six equal monthly instalments*. Normally, this Court used to direct the Transport Corporation to pay the terminal benefits in twelve equal monthly instalments and as a special case, the said period is reduced in this case to six equal monthly instalments in so far as gratuity is concerned.

18. It is made clear that failure on the part of the respondents in releasing any of the amount stated supra shall carry interest at the rate of 10% per annum from the due date and and the loss can be recovered from the Secretary to Government, Transport Department, by applying the principles laid down in the case of Central Co-operative Consumers' Store Ltd. vs. Labour Court, H.P. at Shimla and another, reported in AIR 1994 SC 23, and his/her properties can also be attached in terms of the judgment of the Hon'ble Division Bench of this Court in the case of *A.Sachidanandam, Macneil and Magor Kilburn Group Companies Employees' Union, Chennai vs. S.Srinivasan and others*, reported in *2011 (5) LLN 696 (DB) (Mad.)*. No costs. Consequently, connected miscellaneous petitions are closed."

6. In the light of the above decision of this Court, this Writ Petition fails and the same is dismissed. The Management is entitled to deduct the amount from the terminal benefits, except from the amounts like gratuity, which are protected by Statute like Payment of Gratuity Act etc. The Management is directed to release the terminal benefits after adjusting the amount imposed towards non-implemented punishment of increment cut *within a period of two months from the date of receipt of a copy of this order* and the gratuity shall be released in *six equal monthly instalments*. Normally, this Court used to direct the Transport Corporation to pay the terminal benefits in twelve equal monthly instalments and as a special case, the said period is reduced in this case to six equal monthly instalments in so far as gratuity is concerned.

7. It is made clear that failure on the part of the respondents in releasing any of the amount stated supra shall carry interest at the rate of 10% per annum from the due date and and the loss can be recovered from the Secretary to Government, Transport Department, by applying the principles laid down in the case of Central Co-operative Consumers' Store Ltd. vs. Labour Court, H.P. at Shimla and another, reported in AIR 1994 SC 23, and his/her properties can also be attached in terms of the judgment

of the Hon'ble Division Bench of this Court in the case of *A.Sachidanandam, Macneil and Magor Kilburn Group Companies Employees' Union, Chennai vs. S.Srinivasan and others*, reported in *2011 (5) LLN 696 (DB) (Mad.)*. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

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

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

3.The Secretary to Government,
Transport Department,
Fort Saint George, Chennai-9

+One cc to Mr.D.Sivaraman, Advocate, SR.No.10267
+One cc to Mr.A.Rahul, Advocate, SR.no.10707

MPK
RL/6C/8P/MR/10.5.2017

W.P.(MD)No.3251 of 2016

23.02.2017