

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.12.2018

CORAM:

THE HONOURABLE DR. JUSTICE S.VIMALA

Writ Petition No.23181 of 2018

B.Palaniammal

.. Petitioner

- Vs -

1. The Managing Director
Tamil Nadu Stat Transport Corporation
(Coimbatore) Ltd. Chennimalai Road
Erode Region Erode.
- 2 The General Manager
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd. Chennimalai Road Erode
Region Erode.
- 3 The Branch Manager
Kavuindapadi Branch Tamil Nadu State
Transport Corporation (Coimbatore) Ltd.
Erode.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus Calling for the records pertaining to the impugned demand notice issued by the 2nd respondent, vide Pa.No.688/Na6/Nalam/Tha.A.Po.Ka/ Ko/EMa/16 dated 16.02.2016, demanding a sum of Rs.1,68,962/- from the petitioner as non implemented punishment of increment cut to the petitioners husband namely C.Balusamy and consequently direct the respondents to pay all the death benefits to the petitioner along with other monetary benefits available to the petitioner for the death of her husband along with the interest at the rate of 9% from 23.12.2012 till date of payment to the petitioner within stipulated time as may be fixed by this Court.

For Petitioner : Mr. I.C.Vasudevan

For Respondents: Mr. P.Kannankumar,
Standing Counsel.

O R D E R

The petitioner's husband C.Balusamy, who was working as a Conductor under the respondent, died on 23.11.2012, while in harness. On his death, the Legal Representatives became entitled to the service benefits payable to the deceased, C.Balusamy.

1.1. The second respondent issued a demand notice calling upon the petitioners to pay the sum of Rs.1,68,962/-. After prolonged persuasion, information has been given that towards implementation of the two non-implemented punishment of stoppage of increment, i.e., one for, 2 years 5 months with cumulative effect and another one for 3 years and 6 months, without cumulative effect, those increment cut has been imposed.

1.2. It is the grievance of the petitioner that the nature of charge, enquiry conducted and the punishment awarded are not disclosed expressly.

1.3. Challenging that, non-implemented punishment of stoppage of increment cannot be enforced after the death of the deceased, the writ of certiorari has been filed.

2. The learned counsel appearing for the petitioner relied upon a Division Bench judgment of this Court, in the case of The Tamil Nadu State Transport Corporation (Tirunelveli) Ltd., and two others v. Mahaboo John, dated 24.02.2015, in W.A.(MD) Nos.52 to 54 of 2015, in which it has been held as follows:-

"6. "4. When an order of penalty is passed, it is the duty of the disciplinary authority to see as to how far it could be enforced. The disciplinary authority, who imposed the penalty of stoppage of increment for four years with cumulative effect appears to have lost sight of the impending retirement of the petitioner from service. The service of persons like the petitioner are governed by the Standing Orders issued under the Industrial Employment (Standing Orders) Act. Though stoppage of increment for a specified duration, can be converted into recovery of the amount equivalent to the same, by virtue of certain provisions contained in the Fundamental Rules, in respect of Government servants, who reach superannuation before such penalties are implemented in full, the same logic may not apply to employees of Transport Corporations. The provisions of the Fundamental Rules may not per se apply to Transport Corporation employees.

5. In any event, the order of penalty at least should have taken care of the contingency and made it clear that a recovery of an equivalent amount will be ordered. But the penalty order dated 15.11.2011 does not state so. Even the order of retirement dated 28.07.2012 does not convert the penalty into one of recovery of the equivalent amount. Therefore, what has actually happened is a recovery without any order and that too effected after retirement. It is wholly illegal. In view of the above, the writ petition is allowed direction (sic) the respondent to settle all

the terminal benefits without any recovery to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. If any amount has already been paid, the same shall be deducted. No costs."

3. As the petitioner herein is also identically placed, the above reasonings will hold good for this case also. The increment that was due annually to the deceased ought to have been effected while the deceased was receiving the salary. That has not been done. Even at the time of retirement, necessary modification should have been effected towards recovery. That also has not been done. These two aspects have been taken care of by the Hon'ble Division Bench.

4. The said Division Bench judgment squarely covers the issue involved in this case. Hence, the impugned demand notice, dated dated 16.02.2016, demanding a sum of Rs.1,68,962/- from the petitioner, is quashed. The respondents are directed to settle the terminal benefits without any recovery to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

5. With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Managing Director
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(Coimbatore) Ltd. Chennimalai Road
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- 2 The Genanger
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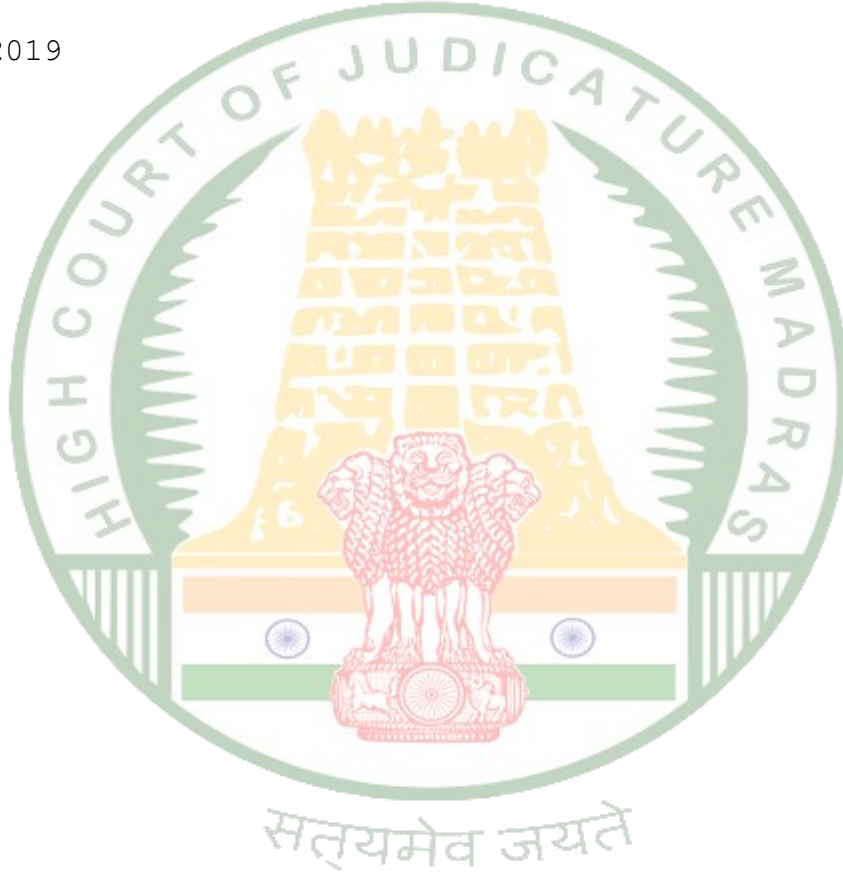
3 The Branch Manager
Kavuindapadi Branch Tamil Nadu State
Transport Corporation (Coimbatore) Ltd.
Erode.

+1cc to Mr. P.Kannankumar, Advocate sr.no.84595

+1cc to Mr. I.C.Vasudevan, Advocate sr.no.83415

W.P.No.23181 of 2018

vsnii(co)
nr 10/01/2019



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