



RESERVED ON:27.06.2018
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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:04.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.A.(MD)No.1001 of 2015
and
M.P.(MD)No.1 of 2015

P.Murugan

...Appellant/Petitioner

Vs.

1. The Management of Tamil Nadu State Transport Corporation(Tirunelveli) Ltd.,
represented by its Managing Director,
Tirunelveli.
2. The General Manager,
The Tamil Nadu State Transport Corporation (Tirunelveli) Ltd.,
Nagercoil Region,
Nagercoil.
3. The Administrator,
The Tamil Nadu State Transport Corporation Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai-600 002.

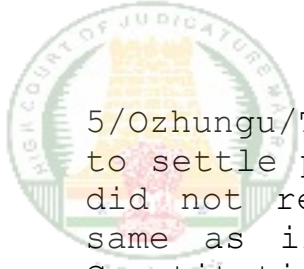
... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order, passed by this Court in W.P.(MD)No.461 of 2014, dated 07.08.2014.

Prayer in WP(MD). 461/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus,

i) calling for the records pertaining to the Impugned order passed by the 2nd respondent in Ref. No.958/Sa.PaPi4/Tha.AaPoKa (Thili) Nager/2013 dated 27.09.2013 in ordering recovery of Rs.1,13,724/- from the petitioner towards unimplemented punishment of retirement cut for five years with cumulative effect imposed by the 2nd respondent by office order No.6606/Legal-



5/Ozhungu/ThaNaAaPoKa/2008 dated 19.03.2013 and also in refusing to settle pension benefits to the petitioner on the ground that he did not remit the recovery amount to the respondents quash the same as illegal, arbitrary and violative of Article 14 of the Constitution of India,

ii) and consequently direct the respondents to settle pension benefits of the petitioner including gratuity, leave salary, commutation amount, Medical and Engineering Colleges Contribution and other attendant retiral benefits without recovery together with interest at the rate of 12% per annum payable to him with effect from 01.11.2013 to till the date on which the above benefits are settled to him;

iii) and to direct the respondents to refund a sum of Rs.22,000/- to the petitioner which was already recovered from his retiral benefits;

iv) and pass such further or other orders as this court may deem fit and proper in the nature and circumstances of the case.

For Appellant	: Mr.A.Rahul
For Respondents	: Mr.K.Sathya Singh

JUDGMENT

M.DURAISWAMY, J.

Challenging the order of dismissal of the writ petition in W.P.(MD)No.461 of 2014, the writ petitioner has filed the above Writ Appeal.

2. The appellant/petitioner filed the writ petition in W.P. (MD) No.461 of 2014 to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated 27.09.2013, passed by the second respondent in ordering recovery of Rs.1,13,724/- (Rupees One Lakh Thirteen Thousand Seven Hundred and Twenty Four only) from the petitioner towards unimplemented punishment of increment cut for five years with cumulative effect imposed by the second respondent by the order dated 19.03.2013 and also in refusing to settle pension benefits of the petitioner on the ground that he did not remit the recovery amount to the respondents and consequently direct the respondents to settle pensionary benefits of the petitioner including gratuity, leave salary, commutation amount, Medical and Engineering Colleges Contribution and other attendant retiral benefits without recovery together with interest at the rate of 12% per annum payable to him with effect from 01.11.2013 to till date and direct the respondents to refund a sum of Rs.22,000/- (Rupees Twenty Two Thousand only) to the petitioner which is already recovered from his retiral benefits.

<https://hcservices.ecourts.gov.in/hcservices/>

3. It is the case of the appellant/writ petitioner that he



was appointed as a Conductor under the respondent Transport Corporation and on attaining the age of superannuation, he retired on 31.10.2013. The second respondent passed an order, dated 19.03.2013, imposing the punishment of stoppage of increment for a period of five years with cumulative effect and a consequential order dated 27.09.2013 was passed by the second respondent, whereby a sum of Rs.1,13,724/- (Rupees One Lakh Thirteen Thousand Seven Hundred and Twenty Four only) was directed to be recovered from his salary. The appellant/writ petitioner challenged the said order after attaining superannuation. It is the contention of the appellant/writ petitioner that the order of recovery could not be made after the date of retirement on attaining the age of superannuation. It is not in dispute that the appellant/writ petitioner filed an appeal challenging the order of punishment dated 19.03.2013.

4. The learned Single Judge dismissed the writ petition finding that the order of recovery is only a consequential order and that there was no merit in the contention taken by the appellant/writ petitioner.

5. Aggrieved over the same, the appellant/writ petitioner has filed the above Writ Appeal.

6. The learned Counsel appearing for the appellant/writ petitioner submitted that no recovery can be effected after retirement from the gratuity of the appellant/writ petitioner. Further the learned Counsel submitted that the said punishment cannot be enforced after retirement by making the recovery of the monetary value equivalent to the increments. Further the learned Counsel submitted that the punishment cannot be enforced after the retirement of the appellant/writ petitioner.

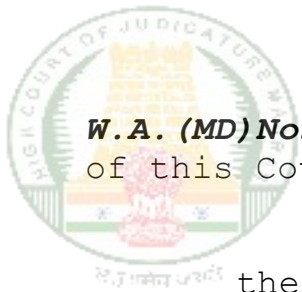
7. The learned Counsel appearing for the appellant/writ petitioner also submitted that on attaining superannuation on 31.10.2013, the punishment imposed on the appellant/writ petitioner got automatically lapsed and the same cannot be implemented after the retirement, since there is no provision in the Model Standing Order.

8. The learned Counsel appearing for the appellant/writ petitioner also submitted that the appellant/writ petitioner is entitled to interest at the rate of 6% per annum on the expiry of three months from the date of retirement of the appellant/writ petitioner.

9. In support of his contentions, the learned Counsel appearing for the appellant/writ petitioner relied upon following

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(i) In the unreported judgment dated 30.06.2017 made in



W.A. (MD) Nos. 465, 231, 232 of 2017 etc., batch, the Division Bench of this Court held as follows:

"38. Thus, for all the above reasons, we are of the firm view that the orders of recovery passed against the workmen are liable to be set aside. Accordingly, the orders of recovery are set aside and the issue that has been raised in regard to the first set of Appeals filed by the Management is answered in favour of the workmen. Insofar as the issue pertaining to the second set of Appeals filed by the workmen is concerned, the order of recovery is set aside and the punishment is confirmed. The second issue is answered partly in favour of the workmen. The next aspect is as to whether the workmen are entitled to interest on the retiral benefits, which is the subject matter in the third set of Appeals. In terms of the relevant statute, when retirement benefits are delayed, they are required to be paid along with interest. Under the Tamil Nadu Pension Rules, an amendment has been brought by insertion of Rule 1 (A) in Rule 45 (A), which provides for interest on the Death cum Retirement Gratuity (DCRG) payable on expiry of three months even in respect of a Government servant, against whom, disciplinary proceeding was initiated and he was thereafter, exonerated of the charge. If such is the position, insofar as the Government servants are concerned, we would be justified in exercising our discretion to direct the Management to pay the retiral benefits with reasonable interest since for a considerable length of time, the retirement benefits have not been paid, and the entire benefits have been fully wiped of under the garb of recovering three times the monetary value of the increment, which we have held in this order as wholly without jurisdiction and illegal. Therefore, we are inclined to direct the Management to pay reasonable interest on the said retiral benefits payable to the workmen, and this issue is answered in favour of the workmen.

39. In the result, the first set of Writ Appeals filed by the Management are dismissed, the second set of Writ Appeals filed by the workmen are partly allowed; and the third and last set of Writ Appeals filed are allowed, with a direction to the Management to settle the entire terminal benefits to the workmen in twelve equated monthly installments together with the simple interest at 6% per annum on the expiry of three months from the date of retirement of the concerned workman, in default, to pay interest at the



rate of 18% per annum from the date of retirement till the date of payment. The first monthly installment shall commence from November, 2017 and the terminal benefits shall be paid on or before 10th of the said month, and the remaining installments shall be paid on or before the 10th day of every succeeding month. No costs. Consequently, connected Miscellaneous Petitions are closed."

(ii) In the unreported judgment dated 12.07.2017 made in **W.A. (MD) Nos. 886 and 887 of 2017**, the Division Bench of this Court held as follows:

"2. The respective first respondent in both the writ appeals were working as Selection Grade Conductors in the appellant Corporation and they retired from service on 31 May 2011 and 30 April 2015 respectively. After their retirement, the General Manager, TNSST Corporation, Trichy, served the impugned proceedings, whereby a sum of Rs.28,494/- and Rs.1,60,409/- were ordered to be recovered from the respective writ petitioners towards "non implemented punishment of increment cuts".

3. Aggrieved by the same, the respective first respondents herein filed W.P(MD)no.19730 of 2016 and 20370 of 2016, seeking a declaration that the action of the Corporation in imposing recovery on them towards "non implemented punishment of increment cuts" and recovering the same from their terminal benefits was illegal. They sought a consequential direction for payment of said amount with interest. The learned Judge allowed the writ petitions as prayed for. Aggrieved by same, these intra Court appeals have been preferred.

4. The learned counsel appearing for the Corporation could not dispute the factual position that in the standing orders applicable to employees / respective first respondents there is no provision to effect such recoveries. The learned Single Judge following the order dated 24 February 2015, rendered by an earlier Division Bench in W.A(MD)No.52 to 54 of 2018, held that permitting the Corporation to deduct the "non implemented punishment of increment cuts" cannot be considered by the aforesaid earlier Division Bench decision and the learned Single Judge was right in the following same."

10. The learned Counsel appearing for the appellant/writ petitioner submitted that the issue involved in the present writ appeal is covered by the judgments made in the above writ appeals.



11. The learned Counsel appearing for the respondent Tamil Nadu State Transport Corporation fairly submitted that the issue involved in the present writ appeal is covered by the decisions made in the above writ appeals.

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12. Having regard to the submissions made by the learned Counsel appearing on either side, since the issue involved in the present writ appeal is covered by the decisions made in the writ appeal in W.A.(MD)No.886 and 887 of 2017, the impugned order passed by the learned Single Judge is liable to be set aside. Accordingly, the same is set aside. The Writ Appeal is allowed. Following the ratio laid down in W.A.(MD)No.465, 231, 232 of 2017 etc., batch, we are inclined to award an interest of 6% per annum on the unpaid terminal benefits to the appellant/writ petitioner. Accordingly, we direct the respondents to pay the entire terminal benefits to the appellant/writ petitioner together with interest at the rate of 6% per annum on the expiry of three months from the date of of his retirement without any recovery. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

+1cc to Mr.K.Sathya Singh, Advocate SR.No.71206

+1cc to Mr.A.Rahul, Advocate SR.No.71340

Ssl

MK/PN/SAR 1/16.07.2018/6P/3C

JUDGMENT MADE IN
W.A. (MD)No.1001 of 2015
and
M.P. (MD)No.1 of 2015
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