



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2019

CORAM:

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THE HONOURABLE MR.JUSTICE **D. KRISHNAKUMAR**

WP(MD)No.12986 of 2019 and
WMP(MD).No.9668 of 2019

P. Tamilarasan ... Petitioner

Vs.

1. The Management of
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
rep. by its Managing Director,
Kumbakonam.

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

... Respondents

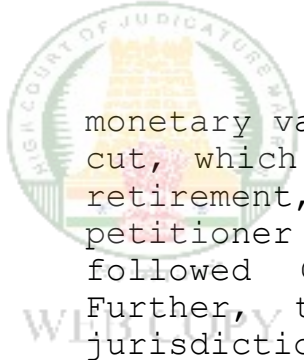
PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus calling for the records pertaining to the impugned order passed by the 2nd respondent in Ref.No.TNSTC/KUMBA/NIR11/UNP/03-20/2019 dated 08.02.2019, quash the same in so far as imposing recovery of Rs.1,86,000/- towards non-implemented punishment of increment cuts and consequently, direct the respondents to forthwith pay him the recovered amount of Rs.13,182/-.

For Petitioner : Mr. A. Rahul
For Respondents : Mr.P. Balasubramanin
Standing Counsel

ORDER

This Writ Petition has been filed seeking to call for the records pertaining to the impugned order passed by the 2nd respondent in Ref.No.TNSTC/KUMBA/NIR11/UNP/03-20/2019, dated 08.02.2019 and quash the same insofar as imposing recovery of Rs.1,86,000/- towards non-implemented punishment of increment cuts and consequently, direct the respondents to forthwith pay him the recovered amount of Rs.13,182/-.

2. According to the petitioner, the second respondent has imposed a recovery of Rs.1,86,000/- from the petitioner towards



monetary value equivalent to non-implemented punishment of increment cut, which could not be implemented on account of the petitioner's retirement, which is due to take place on 31.03.2020. The petitioner states that the respondents - Corporation have not followed Clause 25(iv)(b) of the Certified Standing Orders. Further, the recovery imposed on him is illegal and without jurisdiction as per the judgment made in W.A.(MD).No.465 of 2017 etc., Batch dated 30.06.2017.

3. In support of his contention, the learned counsel for the petitioner relied upon the order passed by the Division Bench of this Court dated 30.06.2017, made in WA(MD).No. 465 of 2017 etc., batch, wherein at Paragraph Nos. 18 to 39, it has been held as follows:-

"18. Though the factual issue appears to be complicated, the legal issue, which requires to be considered by us, lies in a very narrow compass. But, before testing the correctness of the submissions made on either side, and examining the correctness of the impugned orders passed in the Writ Petitions, it would be relevant to refer to the relevant clauses of the Certified Standing Orders as well as in the Common Service Rules.

Clause 25 of the Certified Rules reads as follows:-

"25.PUNISHMENT OF MISCONDUCT:

1. The following shall be the prescribed punishment that may be awarded to workman, guilty of misconduct.

i. Censure

ii. Fine: Subject to the provisions of Payment of Wages Act.

iii. Stoppage of increments: Stoppage of increments with or without cumulative effect.

a) Recovery from wages whole or part of any pecuniary loss, caused to the Corporation by the negligence or breach of orders of the workman.

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.

c) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of reduction to a lower stage in a time scale ordered where such an order cannot be given effect to.

v. Suspension not exceeding 30 days.



vi. Demotion to lower post or lower grades. No workmen shall be demoted to any post or grades lower than to which he was initially recruited under the Corporation.

vii. Compulsory retirement.

viii. Removal from service or discharge.

ix. Dismissal from service.

x. Any of the above in case of accidents where driver is found to be guilty."

19. The Common Service Rules framed by the Management, which is applicable to the employees other than those covered by the Standing Orders, in Annexure V, is similar to the provisions contained in the Discipline and Appeal Rules, in which, Rule 4 would be relevant to be quoted for the purpose of deciding the issue :-

"4 **PENALTIES:**

(1) The following penalties may be imposed on an employee, as hereinafter provided, for misconduct committed by him or for any other good and sufficient reasons.

MINOR PENALTIES:

- (a) Warning
- (b) Censure
- (c) Fine

MAJOR PENALTIES:

(d) Withholding of increments of Pay with or without cumulative effect.

(e) Recovery from Pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld, where such an order cannot be given effect to.

Explanation: In case of stoppage of increment with cumulative effect, the monetary value equivalent to three times the amount of increments ordered to be withheld may be recovered."

20. As pointed out earlier, recoveries have been effected from the terminal benefits paid / payable to the workmen by following the provisions contained in explanation appended to Rule 4 (1) (e) of the Common Service Rules. However, such provision is not contained in Clause 25 of the Certified Standing Orders. It is admitted by the Management that the Common Service Rules will not be applicable to its workmen, as workmen are covered by Certified Standing Orders. If that be so, then the explanation contained in Rule 4 (1) (e) of the Common Service Rules, could have no application to the workmen, and the Management committed a serious error in



invoking clause 25 (1) (iv) (b) of the said provision. Owing to this reason, in the preceding paragraph, we have opined that the orders of recovery are liable to be set aside on the said ground, as the Management has ordered to recover the monetary value three times equivalent to the amount of increment, in the absence of any such enabling provision in the Certified Standing Orders.

21. The next issue to be considered is as to whether clause 25 of the Certified Standing Orders could have been invoked by the Management for recovery of the monetary value, three times equivalent to the amount of increment. The Certified Standing Orders, namely, Clause 25 (i), enumerates the punishments, that may be awarded to workmen for guilty of misconduct. One such punishment is stoppage of increment with or without cumulative effect. Clause 4 is sought to be interpreted by the Management, by stating that recovery could be effected from pay of the monetary value three times equivalent to the amount of increment, ordered to be withheld, where, such an order cannot be given effect to.

22. The Management have to cross three major hurdles to invoke Clause 25 1 (iv) (b). The first being that, it has to satisfy the Court that there were orders of punishment passed. The second being that recovery can be made from the terminal benefits. The third hurdle being that, unless and until, the punishment of stoppage of increment was modified as order of recovery of the monetary value equivalent to the amount of increment ordered to be withheld, the question of invoking Clause 25 1 (iv) (b) of the Certified Standing Orders does not arise.

23. Admittedly, in the instant case, the punishment, which was imposed on the workmen, was punishment of stoppage of increment with or without cumulative effect, for periods ranging from 1 to 3 years. Further, it is an admitted fact that, prior to the workmen attaining the age of superannuation, or being permitted to retire on VRS Scheme, the punishment was not converted to that of order of recovery of monetary value. This would be the sound way to interpret Clause 25 of the Certified Standing Orders, while testing the correctness of the impugned orders, because, what is sought to be recovered is monetary value three times equivalent to the amount of the increment ordered to be withheld. But, the monetary value was never computed at an earlier point of time, prior to the



retirement of the concerned workman.

24. The second aspect that has to be noted is, assuming that the contention raised by the learned counsel for the workmen is not tenable, the next hurdle, which the Management has to cross is to establish, as to why, such order could not be given effect to during the period of service of the workmen. There is nothing on record to show that there is any justifiable reason that the order of punishment could not be given effect to, while the workmen were in service. The explanation offered by the Management is that, certain punishments were not capable of implementation, as the workmen did not have the requisite number of remaining years of service. If such is the position, then, the Management, as an Employer, cannot feign ignorance of the fact as to when the workman will attain the age of superannuation and the Management should have been diligent enough to convert the order of punishment of stoppage of increment into an order of recovery. Only if the Management had done so, they would be justified in relying upon the decision in **Kshetrabasi Mohanti's case** (supra).

25. Keeping this issue aside for a while, we propose to examine the larger issue, which can give quietus to the entire controversy, viz., the issue as to whether the Management is vested with power to pass such orders of recovery against the retired workmen. The law is well settled on the said aspect, viz., if there is no Service Rules or Standing Orders, permitting the employer to continue the disciplinary proceedings or impose punishments against the employee after their date of retirement, no such action of recovery can be initiated and if done, it will be without jurisdiction.

26. In **Dev Prakash Tewari's case**, the Hon'ble Supreme Court pointed out that there was no authority vested with the Management therein, for continuing the disciplinary proceedings for the purpose of imposing any reduction in the retiral benefits payable to the appellant/workman.

27. We have seen Clause 25 of the Certified Standing Orders, and it does not provide for any contingency to impose punishment on a retired employee. The Certified Standing Orders does not empower the employer, namely, the Management herein to retain a workman beyond the age of superannuation for the purpose of continuing the disciplinary proceedings as that are provided under the Fundamental Rules in respect of Government Servants.



28. In **S.Andiyannan's case**, the Hon'ble Full Bench of this Court considered a somewhat similar issue in a case arising under the provisions of Tamil Nadu Cooperative Societies Act, 1983 and held that, 'once an employee retired from service, there can be no authority vested with the employer for continuing any disciplinary proceedings'.

29. The aforementioned two decisions, (viz., in **Dev Prakash Tewari's case**, & **S.Andiyannan's case**) are straight answers to the case of the Management to hold that the Management could not have passed the orders of recovery against the workmen, after the workmen having been permitted to retire, as there is no provision under the Certified Standing Orders to the said effect. One another argument was advanced by the learned counsel for the Management, by stating that the terms 'Wages' and 'Pay' used in Clause 25 of the Certified Standing Orders, have not been defined under the Standing Orders. Therefore, the Management was entitled to recover monetary value, as it was recoverable from the pay, payable to the workman, while he was in service, which would transform as terminal benefits, after retirement. The above submission is liable to be rejected for more than one reason. The Standing Orders Act defines the term 'Wages', and in fact, the definition of the term 'Wages' under Section 4 (rr) of the Industrial Disputes Act, 1947 has been borrowed in the Standing Orders Act. The term 'Wages' would mean all remuneration capable of being expressed in terms of money, which would be payable to a workman in respect of his employment or of work done in such employment.

30. Admittedly, the workmen are no longer in service of the Management/Corporation, and what is to be paid to them, from which, this recovery has been ordered, is terminal benefits and not wages. Therefore, on this ground also Clause 25 (1) (iv) (b) of the Standing Orders could not have been invoked by the Management. A reading of Clause 25 of the Standing Orders pre-supposes that the workmen should be in service. Thus, Clause 25 of the Standing Orders cannot be invoked against a retired workman.

31. It is contended by the learned counsel for the Management that Clause 25 of the Certified Standing Orders has not been challenged by the workmen. In our considered view, the question of challenging said Standing Orders, does not arise as the case of the workmen is that the said Standing Orders would have no



application to them, as they all have attained the age of superannuation.

32. Thus, on the above grounds, it has to be necessarily held that the orders of recovery passed by the Management against workmen, recovering three times the monetary value equivalent to the amount of increment ordered to be without, are absolutely without jurisdiction. Keeping aside all the above findings, we have to examine as to whether, in equity, the Management was justified in passing such orders of recovery. The answer to this question should be in negative.

33. The Hon'ble Supreme Court, in **Syed Abdul Qadir's case (supra)**, pointed out that the relief against recovery is granted by Courts, not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. In a more recent decision, in the case of **Rafiq Masih (White Washer) (supra)**, the Hon'ble Supreme Court culled out the various situations, wherein, recoveries by the Employers would be impermissible in law. It would be beneficial to quote Para No.18 of the said judgment, which reads as follows:-

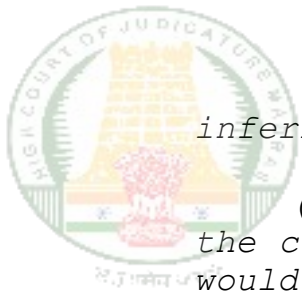
" " 18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein, recoveries by the employers, would be impermissible in law:

"(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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." "

34. The workmen herein would fall within the category of (iii) and (iv) referred above, as the workmen are retired employees, therefore, no order of recovery could have been passed against them. Moreover, they would also be governed by clause (ii) referred above.

35. That apart, we can take judicial notice of the fact that the Management/Corporation has not been in a position to settle the retiral benefits to its workmen on the date of retirement or soon thereafter. Hence, the workmen are compelled to approach the Court and pursuant to the orders passed by the Hon'ble First Bench of this Court, the retiral benefits of the workmen, who retired without any blemish in their service, are paid in twelve installments. We have had instances, where, Contempt Petitions were filed by the retired workmen, as the State Transport Corporations have defaulted in adhering to the payment schedule. In such circumstances, if we weigh the scales, the workmen, obviously, have to be placed in a more advantageous position, as it would be inequitable, harsh and arbitrary to recover the monetary value equivalent to that of the amount of the increment ordered to be withheld after retirement, that too, three times the monetary value equivalent, which has been held to be wholly un-sustainable and without jurisdiction. Therefore, the situation mentioned by the Supreme Court, in para 18 (v) would also stand attracted.

36. In the preceding paragraphs, we have mentioned that the Management cannot effect such orders of recovery against retired employee, as there is no such provision under the Certified Standing Orders or in the Common Service Rules. Precisely, this was the reason for setting aside the punishment imposed on the employee of the Cooperative-Societies, in the case of **S. Andiyannan (supra)**. It is submitted that, in certain cases, the entire retiral benefits have been withheld on the ground that orders of recovery have been passed, and in some cases, because of the recovery of three times the monetary value equivalent to the amount of increment ordered to be withheld, the entire retiral benefits,



including the Gratuity, Provident Fund etc., have been adjusted.

37. One more important aspect, which we wish to point out is that, the Management cannot plead ignorance of the fact that, on the date, when punishment was imposed on the workmen, the punishment was not capable of being implemented as workmen did not have the required remaining years of service. If that is so, the Management cannot take shelter under the explanation contained Clause 4 (1) (e) to suit its own convenience, and the workmen cannot be put in a disadvantageous position. In such circumstances, the Management cannot rely on the decision of the Hon'ble Supreme Court in **Kshetrabasi Mohanti (supra)** where, the Hon'ble Supreme Court considered the correctness of the order by substituting the punishment for a candidate, who was still in service. There, it was a case, where, it was not possible for the Corporation to implement the punishment, but, the case on hand, is a case, where, the Corporation was fully aware of remaining years of service in respect of each of the workmen, yet, chose to pass such orders of recovery. Thus, the Management, having failed to convert the punishment of stoppage of increment to that of order of recovery of monetary value, when the workmen were in service, it cannot turn around and say that those orders could be implemented by invoking Clause 25 (iv) (b) of the Certified Standing Orders.

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

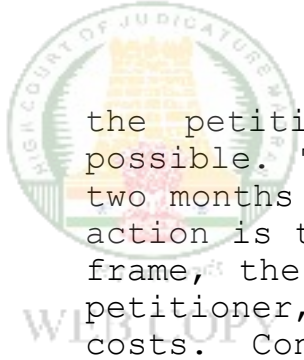


initiated and he was thereafter, exonerated of the charge. If such is the position, insofar as the Government servants are concerned, we would be justified in exercising our discretion to direct the Management to pay the retiral benefits with reasonable interest since for a considerable length of time, the retirement benefits have not been paid, and the entire benefits have been fully wiped off 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.

38. 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."

4. Challenging the aforesaid order, the respondents - Corporation has preferred an appeal before the Hon'ble Supreme Court in S.L.P.No.1755 of 2018 and the same was dismissed. Therefore, the Judgment of this Court made in W.A.(MD).No. 465 of 2017 etc., batch dated 30.06.2017, is squarely applicable to the case on hand. On perusal of the impugned order, it is seen that the respondent Corporation has not provided any opportunity of hearing to the petitioner nor they followed the procedure under Clause 25 of the Standing Orders. Therefore, this Court is inclined to interfere with the impugned order passed by the second respondent, dated 08.02.2019, as it has been passed without following the principles of natural Justice and the procedure under Standing Orders.

5. Accordingly, the Writ Petition is allowed and the impugned order passed by the 2nd respondent in Ref.No.TNSTC/ KUMBA/ NIR11/ UNP/ 03-20/2019, dated 08.02.2019, is quashed. However, the respondents are given liberty to proceed with the matter in accordance with law, after providing an opportunity of hearing to



the petitioner and pass appropriate orders as expeditiously as possible. The said exercise shall be completed within a period of two months from the date of receipt of a copy of this order. If no action is taken by the respondents Corporation within the above time frame, the respondents shall refund the amount recovered from the petitioner, to him, within a period of four weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Managing Director,
The Management of
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Kumbakonam.

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

+1 CC to Mr.P.BALASUBRAMANIAN, Advocate SR-70227.

WP (MD) No.12986 of 2019 and
WMP (MD) .No.9668 of 2019

20.06.2019

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