BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **13.02.2020**
CORAM:
THE HONOURABLE MR.JUSTICE **M.S.RAMESH**
W.P.(MD) No.642 of 2020
and
W.M.P.(MD) Nos.473 & 474 of 2020

A.Veyagulasamy ... Petitioner

/vs./

1.The Management of
State Express Transport Corporation (Tamilnadu) Limited,
represented by its Managing Director,
Pallavan Salai,
Chennai 2.

2.The General Manager,
State Express Transport Corporation (Tamilnadu) Limited,
Pallavan Salai,
Chennai 2.

3.The Assistant Manager (Legal and Personnel),
State Express Transport Corporation (Tamilnadu) Limited,
Pallavan Salai,
Chennai 2. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 3rd respondent in Letter No.080066/WA4/SETC/2019 dated 27.05.2019 quash the same insofar as recovering a sum of Rs.97,500/- from the petitioner towards recovery of Non Implemented Punishment of Increment Cuts and consequently to direct the respondents to pay the petitioner recovered amount of Rs.97,500/- together with interest at the rate of 18% per annum payable from 30.06.2019 to till the date on which the above amounts is settled to the petitioner.

For Petitioner : Mr.A.Rahul
For Respondents : Mr.K.Sathiyasingh
Standing Counsel

ORDER

This Writ Petition is filed to quash the order dated 27.05.2019 passed in Letter No.080066/WA4/SETC/2019 by the 3rd respondent and to direct the respondents to pay the petitioner's recovered amount of Rs.97,500/- together with interest at the rate of 18% per annum payable from 30.06.2019 to till the date on which the above amounts is settled to the petitioner.

2.By the impugned order dated 27.05.2019, the petitioner was called upon to remit a sum of Rs.97,500/- towards non implementation of punishment of the increments awarded against him. It is the case of the respondents that the petitioner was imposed with a stoppage of increment during his service period and the same could not be implemented and therefore, the respondents sought for recovery of the amount calculated for the period of non implementation of punishment.

3.The issue with regard to the respondent authority to pass such recovery order is no more *res integra,* since the Hon'ble Division Bench of this Court in an order, dated 13.06.2017, passed in the case of ***Management of Tamil Nadu State Transport Corporation and others v. J.Arumugam and others*** in W.A(MD).No.465 of 2017 had elaborately considered the powers of the Corporation to order for such recoveries. One of the grounds raised before the Hon'ble Division Bench is to the powers of the Corporation to invoke either the Certified Standing Orders covering workmen or the Common Service Rules.

4.The learned Standing Counsel for the respondents would submit that in view of their power vested under the Certified Standing Orders, the recovery has been made. In this connection, it would be appropriate to refer to the findings of the Hon'ble Division Bench in the decision in the case of ***Management of Tamil Nadu State Transport Corporation and others v. J.Arumugam and others*** (Supra):

> "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 or 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 with hold 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 ordered 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."

5.The above said extract is self explanatory to the effect that the Certified Standing Orders does not empower the respondents/Corporation to recover the amounts paid to the retired employee for recovery of Non Iimplemented Punishments of Increment cuts. While that being so, the impugned order itself cannot be sustained. Consequently, there shall be a direction to the respondents/Corporation to refund the amount of Rs.97,500/- recovered by them from the petitioner out of his gratuity amount together with the interest at the rate of 6% from the date of recovery till the date of actual payments. The respondents shall refund the above said sum atleast within a period of six weeks from the date of receipt of a copy of this order.

6.With the above directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar

/True copy/

/ /2020
Sub Assistant Registrar

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To

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State Express Transport Corporation (Tamilnadu) Limited,
represented by its Managing Director,
Pallavan Salai,
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Pallavan Salai,
Chennai 2.

+1 cc Mr.A.RAHUL ,Advocate, SR.No. 6545
+1 cc Mr.K.SATHIYA SINGH ,Advocate, SR.No. 6277

W.P.(MD) No.642 of 2020

MM
KK/SAR/24.02.2020/8P-6C