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W.P.(MD)No.7558 of 2020

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.07.2020**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.7558 of 2020

and

W.M.P(MD)No.7050 of 2020

G.Senthil

...Petitioner

-Vs-

1.The State Express Transport Corporation
(Tamil Nadu) Ltd.,
Rep. by its Managing Director,
Pallavan Salai,
Chennai-02.

2.The General Manager,
The State Express Transport Corporation
(Tamil Nadu) Ltd.,
Pallavan Salai,
Chennai-02.

3.The Senior Grade Deputy Manager,
The State Express Transport Corporation
(Tamil Nadu) Ltd.,
Madurai Branch,
Madurai.

4.The Branch Manager,
The State Express Transport Corporation
(Tamil Nadu) Ltd.,
Madurai Branch,
Madurai.

...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the third respondent in Ref.No.Nil, dated Nil signed by the third respondent on 25.04.2020 and action of the respondents in recovering Rs.75,900/- from the petitioner towards monetary value equivalent to non-implemented punishment of increment cuts, quash the same and consequently direct the respondents to forthwith pay the petitioner the recovered amount of Rs.75,900/- with 18% interest payable from 27.04.2020 to till the date on which the above amount is settled to him.

For Petitioner : Mr.A.Rahul

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



For Respondent : Mr.R.Rajamohan,
Standing Counsel

ORDER

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the third respondent in Ref.No.Nil, dated Nil signed by the third respondent on 25.04.2020 and action of the respondents in recovering Rs.75,900/- from the petitioner towards monetary value equivalent to non-implemented punishment of increment cuts, quash the same and consequently direct the respondents to forthwith pay the petitioner the recovered amount of Rs.75,900/- with 18% interest payable from 27.04.2020 to till the date on which the above amount is settled to him.

2. Heard Mr.A.Rahul, learned counsel appearing for the petitioner and Mr.R.Rajamohan, learned Standing Counsel appearing for the respondents.

3. The petitioner was working at the respondents Corporation and on superannuation, he retired from service on 30.04.2020 and five days prior to the superannuation, the impugned order ,dated 25.04.2020 has been passed, which reads thus:-

“பார்வையில் குறிப்பிட்டுள்ள ஆணைப்படி திரு.G.செந்தில் ஓட்டுநர் 6119 என்பவர்க்கு அன்னாரின் ஊதிய உயர்வினை 48 மாதங்கள் தொடர் விளைவுகளுடனும், 18 மாதங்கள் தொடர்விளைவுகளின்றியும் தள்ளி வைக்கப்பட்டதை அன்னாரின் பணிக்காலத்தில் அமுல்படுத்த இயலாத மீதமுள்ள காலத்திற்கு ரூ.75,900/- கணக்கீடு செய்யப்பட்டுள்ளது. மேற்படி பணப்பிடித்தம் ரூ.75,900/-ஐ அன்னார் செலுத்த அறிவுறுத்தி செலுத்திய விவரத்தை தெரிவிக்க கோரப்படுகிறது.

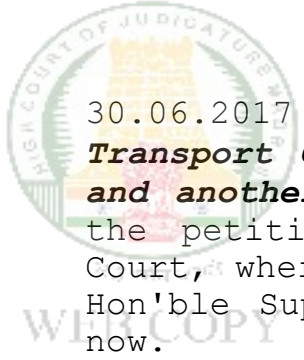
மேற்படி நபர் 30.04.2020 அன்று ஓய்வு பெறவுள்ளதால் மேற்படி விவரம் அளித்த பின்னரே பணிமுடிவு நற்பயன் பிரிவிற்கு பணிப்பதிவேடு அளிக்க இயலும் என்ற விவரம் தெரிவித்துக் கொள்ளப்படுகிறது.

ஒப்பம்
25.04.2020

மு.நி.து.மே(ம.வ)க்காக,”

Challenging the same, the present writ petition has been filed.

4. The learned counsel appearing for the petitioner would submit that the issue raised in this writ petition is no more *res-integra* and the issue has been raised in several other writ petitions, where the matter has gone to the Division Bench of this Court. Where the Division Bench in a batch of cases, in W.A(MD) Nos.465 of 2013, etc., batch decided the issue by an order dated



30.06.2017 in the matter of **(Management of Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., and others vs. J.Arumugam and another)**. It is further submitted by the learned counsel for the petitioner that the matter has gone to the Hon'ble Supreme Court, where SLP also was filed and that was also dismissed by the Hon'ble Supreme Court, whereby the issue has been concluded as of now.

5. Therefore, the learned counsel appearing for the petitioner would submit that the impugned order cannot be sustained as from the retired person recovery cannot be made. Therefore, the said impugned order is liable to be interfered with.

6. However, the learned Standing counsel appearing for the respondents would submit that the law settled is only to the extent that the recovery cannot be made from the retired person. Here is the case in hand, the petitioner admittedly retired from service on 30.04.2020, before which, while he was in service on 25.04.2020 itself the impugned order has been passed and the recovery has been started prior to the superannuation. The said law decided by the Law Courts referred to in the two judgments cannot be applied to the present case. Therefore, the impugned order is sustained.

7. I have considered the submissions made by both counsel and I have also perused the materials placed before this Court.

8. As has been rightly pointed out by the learned counsel for the petitioner that the issue is no more *res integra*. In this context, the judgment of the Division Bench in W.A(MD)No.465 of 2013 etc., batch has completely answered the issue raised herein. Where, the Division Bench after having elaborately discussed the issue and also by taking into account of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others, reported in (2015) 4 SCC 334** case has allowed the similar plea raised in those cases and accordingly, the appeals filed by the Transport Corporation were dismissed. The relevant portion of the order of the Division Bench are usefully extracted hereunder:-

"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.

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."

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9. Following the said Division Bench Judgment I had an occasion to consider the similar issue in W.P.(MD)No.5711 of 2017 etc., batch by common order dated 10.04.2018 in the matter of **T.Packirisamy vs. The Tamil Nadu State Transport Corporation (Kumbakonam)Ltd., and another**, where also I have passed the following order following the Division bench judgment, which reads thus:-

"4. The learned counsel for the petitioner would submit that as against the said orders passed by the learned single judge of this Court, a batch of Writ Appeals were preferred in W.A.No.465 of 2017 where the Hon'ble Division Bench of this Court dated 30.06.2017, after having analyzed the issue has given the following direction.

" 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".

5. The learned counsel for the petitioner would submit that as against the said Hon'ble Division Bench order, though Special Leave Petition was filed by the respondent / management before the Hon'ble Apex Court the said SLP also was dismissed by an order dated 09.02.2018 in SLP Civil No.1755 of 2018. Therefore, the learned counsel for the petitioner would submit that the issue raised in these writ petitions are fully covered by the decision of the said Division bench order. Therefore a similar relief can be given to the petitioners also.

6. The aforesaid submission made by the learned counsel



for the petitioner is not disputed or controverted by the Standing Counsel appearing for the respondent and he fairly submits that the issue raised in these writ petitions are covered by the decision of the Hon'ble Division Bench as referred above.

7. In view of the said submissions made by the learned counsel for the petitioners/ parties that the issue raised in these writ petitions is covered by the decisions of the Hon'ble Division Bench, this writ petitions are allowed with the following terms.

8. The petitioners shall be entitled to salary or any retirement benefits which shall not be withheld by the respondent corporation and if the same is withheld, it shall be paid to the petitioner with 6% interest from the date of due till the date of payment. The payment of benefits with interest as indicated above shall be made by the respondent to the petitioners in 12 equal monthly installments. The first such installment shall commence from May, 2018 and every month it shall be paid on or before 10th day of every succeeding English calendar month.

9. With this direction, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed. "

10. Therefore, the issue as has been rightly pointed out by the learned counsel for the petitioner has already been settled and in that view of the matter, the impugned order directing the petitioner to pay the said amount of Rs.75,900/- by way of 48 months recovery on monthly basis cannot be sustained, therefore, the said order is liable to be quashed.

11. Accordingly, the impugned order, dated 25.04.2020 is quashed and the writ petition is therefore allowed. The respondents are hereby directed to refund the amount already recovered from the petitioner, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

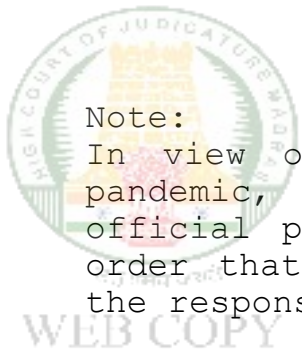
Sd/-

Assistant Registrar (AD-II)

// True Copy //

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Sub Assistant Registrar(CS)



Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Managing Director,State Express Transport Corporation
(Tamil Nadu) Ltd.,
Pallavan Salai,
Chennai-02.

2.The Administrator,Tamil Nadu State Transport
Corporation Pension Fund Trust,
Thiruvalluvar Illam,Pallavan Salai,
Chennai-02.

+1 CC to M/s.R. RAJAMOHAN, Advocate (SR-13315[F] dated 29/07/2020)

Order made in
W.P. (MD)No.7558 of 2020

Dated:
28.07.2020

AP(07/08/2020) 9P 4C