



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2020

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.8820 of 2020

and

W.M.P(MD)Nos.8100 & 8101 of 2020

WEB COPY

S.Ramkumar

...Petitioner

-Vs-

1.The Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
Rep. by its Managing Director, Tirunelveli.

2.The General Manager,
The Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
Tirunelveli Region, Tirunelveli.

3.The Assistant Manager (Personnel),
The Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
Tirunelveli Region, Tirunelveli.

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

...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 second respondent K.No.9952/E1/PaAa/TNSTC/Thili/20 dated 03.07.2020 and action of the respondents in proposing to recover Rs.1,25,400/- 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 him all his retirement benefits including provident fund, gratuity, leave salary, VRS compensation, Social Security Scheme amount, Refund of Post Retirement Welfare Scheme amount and Refund of IRT amount and also monthly pension arrears from February 2020, without any recovery and together with 18% interest per annum payable from 31.01.2020 to till the date on which the above amounts are settled to the petitioner.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.R.Rajamohan
Standing Counsel



ORDER

The prayer sought for herein in this writ petition is for a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the second respondent K.No.9952/E1/PaAa/TNSTC/Thili/20 dated 03.07.2020 and action of the respondents in proposing to recover Rs.1,25,400/- 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 him all his retirement benefits including provident fund, gratuity, leave salary, VRS compensation, Social Security Scheme amount, Refund of Post Retirement Welfare Scheme amount and Refund of IRT amount and also monthly pension arrears from February 2020, without any recovery and together with 18% interest per annum payable from 31.01.2020 to till the date on which the above amounts are settled to the petitioner.

2.Heard Mr.A.Rahul, learned counsel appearing for the petitioner and Mr.R.Rajamohan, learned Standing Counsel appearing for the respondents 1 to 3.

3. The petitioner had been working as a Conductor at the respondent Corporation and after become eligible to get Voluntary Retirement from service accordingly, he retired from service by way of Voluntary Retirement Scheme with effect from 31.01.2020 from the respondent Corporation. Though the petitioner retired from service on 31.01.2020 his retiral benefits has not sofar been disbursed. In this regard, the petitioner has given a request to the respondents, they have sent a communication dated 03.07.2020, wherein, the respondents have stated that in view of the un-implemented punishment still pending against the petitioner, based on which, a sum of Rs.1,25,400/- have to be recovered from the petitioner, in order to recover the same, the petitioner was directed to give a consent letter to adjust the said amount in the retiral benefits payable to the petitioner and the petitioner has not given a consent letter, the pension papers could not be moved and the pensionary benefits payable to the petitioner could not be made. This communication dated 03.07.2020 issued by the respondents is under challenge in this writ petition.

4. The learned counsel appearing for the petitioner would submit that, if at all any un-implemented punishment is still there, for which, recovery cannot be made from the retired employees as there is no condition imposed on the petitioner by the respondents corporation at the time of permitting the petitioner to go for Voluntary Retirement from service on 31.01.2020. He would also submit that, the issue as to whether such un-implemented punishment can be implemented and recovery to that effect can be made from the retired employee, is no more *res integra*, as the Division Bench of this Court already decided the issue and in this regard, the



petitioner counsel has relied upon a decision in W.A.(MD)Nos. 52 to 54 of 2015, dated 24.02.2015 in **the Tamil Nadu State Transport Corporation (Tirunelveli) Ltd., and two others vs. Mahaboo John.**

5. He would also rely upon a decision of mine, where I had an occasion to consider the similar issue in a batch of writ petitions in W.P.(MD)Nos.5711 of 2017 etc., batch, dated 10.04.2018 in the matter of **T.Packirisamy vs. The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,** where the learned counsel for the petitioner relied upon the following passage:-

"3.The issue raised in these writ petitions is that the proposed recovery made on the part of the respondent against the petitioners by withholding the terminal benefits like Leave Salary are illegal and according to the learned counsel for the petitioner, since the issue have been raised in number of cases in a batch of Writ Petitions before this Court, where this Court passed orders in favour of the workmen/ employees.

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.

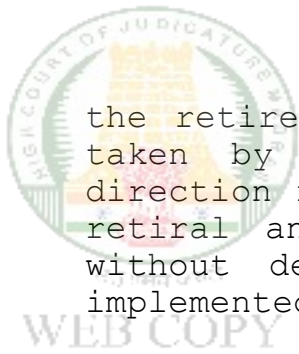
7. In view of the said submissions made by the learned counsel for the petitioners/ parties that the issue raised in these writ petitions is covered by the decisions of the Hon'ble Division Bench, this writ petitions are allowed with the following terms.

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."

6. Last week also, a similar issue had come up in W.P(MD) No.7558 of 2020, where I shown my indulgence by my order, dated 28.07.2020 and it was a case where similarly placed employee of the Transport Corporation has been denied the retiral benefits and the alleged due payable by the petitioner in view of the un-implemented punishment sought to be recovered and recovery was started, therefore, an order was passed in that writ petition not to recover from the retired employee and the recovered amount are directed to be repaid to the employee.

7. By relying upon all these decisions, the learned counsel for the petitioner would submit that the petitioner also similarly placed, therefore, the impugned communication, dated 03.07.2020 cannot be sustained and the respondents are not entitled to either



the retired employee i.e., the petitioner, accordingly, a decision taken by the respondent is there, and therefore, a suitable direction may be given to the transport corporation to release the retiral and other pensionary benefits payable to the petitioner without deducting any amount in the head of recovery for un-implemented punishment.

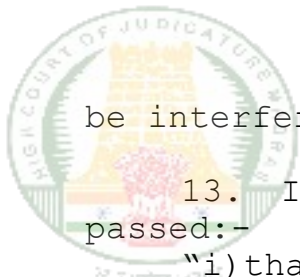
8. The learned Standing counsel appearing for the respondents would submit that at the time of passing an order on 31.01.2020, permitting the petitioner to go for Voluntary Retirement from Service, it has been specifically stated that if any statutory dues are payable by the petitioner that would be recovered from the petitioner, therefore, such condition can very well be pressed against the petitioner, based on which, now, the impugned communication since has been issued by the respondents corporation to recover the such dues payable by the petitioner, therefore, it cannot be said that the petitioner has been permitted to retire without any condition and based on which, recovery cannot be made from the retired employee.

9. I have considered the submissions made by the learned counsel appearing for the petitioner as well as the learned Standing Counsel appearing for the respondents and perused the materials placed before this Court.

10. As has been rightly pointed out by the learned counsel for the petitioner the issue raised herein is no more *res integra*, as number of cases where the similarly placed employees approached this Court, many number of orders have been passed including Division Bench Orders and in the order referred to above, dated 10.04.2018 in W.P(MD)No.5711 of 2017 etc., batch, I have considered the similar issue, which has been extracted herein above.

11. Uniformly the said view taken by this Court has been consistently followed in a number of cases of this nature, therefore, this Court feels that this case cannot be an exception to the same.

12. Moreover, the said reason relied upon by the learned counsel for the respondents/Corporation by stating that, in the order permitting the petitioner to go for Voluntary Retirement from Service on 31.01.2020 a condition was imposed that, the statutory dues can be recovered from the petitioner, cannot come to the aid of the respondents, as no such statutory dues has been spelt out in the impugned communication as if, such statutory dues is kept in the name of the petitioner for recovery. When that being the position, the reason cited in the impugned order cannot be sustained and therefore, the respondents cannot recover any amount by way of adjustment from the retiral benefits payable to the petitioner, this Court feels that the impugned order is liable to



be interfered with.

13. In that view of the matter, the following orders are passed:-

"i) that the impugned order is quashed and the respondents are hereby directed to calculate the retiral benefits payable to the petitioner and shall be paid in twelve equal monthly instalments;

ii) The first installment shall commence by making payment after restoration of COVID-19 normalcy.

Iii) However, the monthly pension payable to the petitioner alone atleast shall be calculated and be paid from the next month onward as the petitioner cannot survive without even pension."

14. With this direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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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.

Order made in
W.P. (MD) No. 8820 of 2020
Dated: 06.08.2020

SPU (07.09.2020) 6P 1C