



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.12773 of 2020

and

W.M.P. (MD) No.10845 of 2020

R.Maharajan

...Petitioner

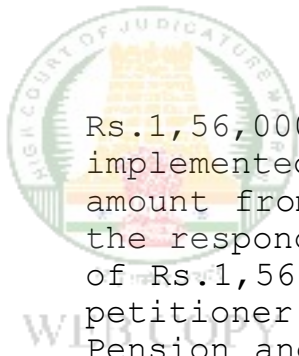
-Vs-

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 Assistant Manager (Legal),
The State Express Transport Corporation,
(Tamil Nadu) Ltd.,
Pallavan Salai,
Chennai -02
- 4) The Branch Manager,
The State Express Transport Corporation,
(Tamil Nadu) Ltd.,
Madurai Branch,
Madurai.
- 5) The Administrator,
Tamil Nadu State Transport Corporation
Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Sallai,
Chennai -02

...Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Letter No.00657B/SaPa3/2020 dated 07.03.2020 of the 2nd respondent in imposing recovery of

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Rs.1,56,000/- on me towards monetary value equivalent to non-implemented punishment of increment cuts and recovering the said amount from the petitioner, quash the same and consequently direct the respondents to forthwith pay the petitioner the recovered amount of Rs.1,56,000/- along with entire terminal benefits payable to the petitioner including Provident Fund, Gratuity, Commuted Value of Pension and Social Security Scheme amount with interest at the rate of 18 % per annum payable from 13.04.2020 to till the date on which the above amount is settled to the petitioner.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.R.Rajamohan,
Standing counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned letter dated 07.03.2020 of the 2nd respondent in imposing recovery of Rs.1,56,000/- on the petitioner towards monetary value, equivalent to non-implemented punishment of increment cuts and to recover the said amount from the petitioner and thereby to quash the same and for a consequential direction to the respondents to forthwith pay the petitioner the recovered amount of Rs.1,56,000/- along with entire terminal benefits payable to the petitioner with interest at the rate of 18 % per annum payable from 13.04.2020 to till the date, on which, the above amount is settled to the petitioner.

2. The petitioner having worked as a Driver at the respondent Transport Corporation for several years, retired from service on superannuation on 31.03.2020. Though he retired from service, his retiral benefits have not been settled. The reason for non-settling of his retiral benefits is, because, the petitioner, during his service, had been inflicted with punishment, for which, recovery was ordered to an extent of Rs.1,56,000/- Therefore, the said amount is yet to be recovered from the petitioner. In view of the same, because of the non-implemented punishment by way of recovery to an extent of Rs.1,56,000/- unless the petitioner has paid the said amount or gives his concept for adjusting the same, the pension papers cannot be moved and this has been communicated to the petitioner by the impugned order of the respondent dated 07.03.2020. Challenging the same, the present writ petition has been filed.

3. Mr.A.Rahul, learned counsel for the petitioner would submit that, the said reason stated in the impugned order cannot be sustained, in view of the settled legal position. The learned counsel would further expand his argument by stating that, since the petitioner was permitted to retire from service on attaining superannuation on 31.03.2020 and before which, if at all any non-



implemented recovery is still there, the same cannot be recovered after the employee retired from service and therefore, the said reason cannot stand in the way for the petitioner to get his retiral benefits from the respondent Transport Corporation.

4. In this regard, he has relied upon various judgments of this Court and also the judgment of the Hon'ble Supreme Court in **State of Punjab and others vs. Rafiq Masih (White Washer) and others** reported in (2015) 4 SCC 334.

5. He would also submit that, this issue has been decided in a number of cases and uniformly, the settled legal position has been followed. In this context, the learned counsel relied upon two of my orders. They are:-

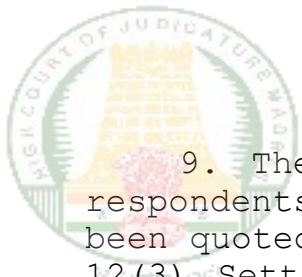
(i) Order made in W.P.(MD) No.7558 of 2020, dated 28.07.2020 in the matter of **G.Senthil vs., State Express Transport Corporation and others;** and

(ii) Order made in W.P.(MD) No.8820 of 2020, dated 06.08.2020 in the matter of **S.Ramkumar vs. State Transport Corporation, Tvl and others.**

6. Relying upon these decisions, the learned counsel for the petitioner would submit that, the issue raised in this writ petition is already settled and a number of orders have been passed. Therefore, the petitioner is also similarly entitled to get the orders. Accordingly, the impugned order stating the aforesaid reasons has to be quashed, he contended.

7. However, Mr.R.Rajamohan, learned standing counsel appearing for the respondents would submit that, though a number of orders have been passed, as has been stated by the learned counsel for the petitioner and recently, this Court, by following the settled legal position, has passed some orders in the month of July and August 2020, as has been relied upon by the learned counsel appearing for the petitioner, in view of the settlement entered between the Employer and Employees under Section 12(3) of the I.D.Act, dated 04.01.2018, the Employer is entitled to or empowered to recover such an un-implemented punishment by way of recovery due from the Employees, who retired, even after retirement.

8. He would also submit that, taking into account the said clause available in the 12(3) settlement, dated 04.01.2018, a similar plea was raised by one of the retired employee in W.P.No.32350 of 2019, where the learned Judge of this Court, by his order dated 18.11.2019, accepting the plea of the respondent Transport Corporation, accordingly, rejected the plea raised by the retired employee, who was the petitioner in that writ petition that, he would be entitled to get the retiral benefits without subjected to recovery of the non-implemented punishment amount by the Employer.



9. Therefore, the learned standing counsel appearing for the respondents would submit that, following the said analogy, as has been quoted in W.P.No.32350 of 2019 dated 18.11.2019, in view of the 12(3) Settlement, this writ petition also can be rejected, as the plea raised by the petitioner cannot be accepted in view of the terms of settlement.

10. I have considered the rival submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

11. Though the objections have been raised by the learned standing counsel appearing for the respondents by citing the order dated 18.11.2019 made in W.P.No.32350 of 2019, I am of the view that, assuming that, there has been a provision or terms between the Employer and Employee's union by way of settlement under section 12 (3) of the I.D. Act, the Employees cannot be expected to surrender their lawful rights by way of acquiescence or waiver. In this content, the law is well settled that, when statutory provision is available in aid of the employer to recover such non-implemented punishment amount, by way of standing orders or statutory provisions, certainly, the Employer would be entitled to recover the same even from the Employee, who retired from service.

12. However, in the absence of any such statutory provisions, which have been taken note of or noticed by this Court, in a number of occasions, and ultimately, the matter has been decided in favour of the Employees that non-implemented punishment recovery cannot be made, unless and until, the statutory provision is available.

13. This settled position cannot be unsettled all of a sudden without any plausible or acceptable reason.

14. No doubt, there might have been a 12(3) Settlement, dated 04.01.2018, which might consist of a term to that effect whether that would not overcome the law settled by this Court, especially in the context of in the absence of statutory provisions available, in favour of the employee.

15. Moreover, the settled legal position as has been discussed above has been uniformly followed very consistently in almost all the cases of this nature and I passed some orders recently, as has been relied upon by the learned counsel for the petitioner.

16. In the order, dated 06.08.2020, which is the recent order, after having taken note of several earlier orders passed, I have passed the following order:-

"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 adjust the amount or recovery for the un-implemented punishment of 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 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 in 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 revery. 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, accordingly, this Court feels that the impugned order is liable to be interfered with.

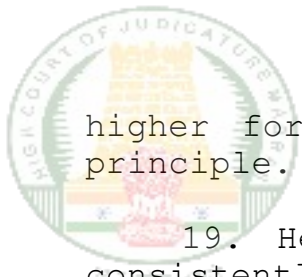
13. In that view of the matter, the following orders are passed:-

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

17. The reason stated in the said order, in my considered view, would be squarely applicable to the facts of the present case also.

18. It is also a settled proposition that, once a consistent view is taken for years together and the law is settled in that regard, in respect of similar issues, when they come to the Court periodically, the Court cannot change its stand unless and until the



higher forum declared the law in contra to the already followed principle.

19. Herein the case in hand, the view taken by this Court consistently is not only based on the earlier orders passed by the Writ Courts i.e. single Bench orders but also Division Bench orders and very particularly, on the basis of the law declared by the Hon'ble Apex Court in **White Washer's case** reported in **(2015) 4SCC 334**, wherein at paragraph no.18, the Hon'ble Supreme Court has given, what are all the circumstances under which recovery cannot be permitted and one of such situation is, the 'retired employee', from whom recovery shall not be made.

20. Therefore, the view consistently taken by this Court following the Hon'ble Supreme Court's judgment and also a number of orders passed by this Court, cannot be, at one fine morning, expected to be changed without any plausible reason or without any authoritative pronouncement from higher forums of law Courts.

21. In that view of the matter, this Court feels that the objection raised by MrR.Rajamohan, learned standing counsel appearing for the respondents is liable to be rejected and accordingly, it is rejected.

22. Considering the factual matrix of this case, this Court is inclined to dispose of this writ petition with the following orders:-

(i) The impugned letter No.00657B/SaPa3/2020, dated 07.03.2020 of the 2nd respondent is quashed;

(ii) The respondents are directed to calculate the retiral benefits payable to the petitioner and the same shall be paid in 12 equal monthly installments;

(iii) The first installment shall commence from 1st of November 2020 and shall continue to be paid till the entire due is paid for the next 12 months;

(iv) It is made clear that, the petitioner's right to claim interest for the belated payment in future, if any, is protected and

(v) It is also made clear that, the recovered amount of Rs.1,56,000/- shall also be refunded to the petitioner and that the same shall also be calculated for the total amount payable to the petitioner and accordingly, the said amount also to be paid along with the retiral dues payable to the petitioner in twelve equal monthly installments as indicated above.



23. With all these directions, this writ petition stands ordered accordingly. However, there shall be no order as to costs. Consequently, connected W.M.P.(MD) No.10845 of 2020 is closed.

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Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To:

1. The Managing Director,
State Express Transport Corporation
(Tamil Nadu) Ltd.,
Pallavan Salai, Chennai -02
- 2) The General Manager,
The State Express Transport Corporation,
(Tamil Nadu) Ltd.,
Pallavan Salai, Chennai -02
- 3) The Assistant Manager (Legal),
The State Express Transport Corporation,
(Tamil Nadu) Ltd.,
Pallavan Salai, Chennai -02
- 4) The Branch Manager,
The State Express Transport Corporation,
(Tamil Nadu) Ltd.,
Madurai Branch, Madurai.
- 5) The Administrator,
Tamil Nadu State Transport Corporation
Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Sallai, Chennai -02

+1 CC to Mr.R.RAJAMOHAN, Advocate SR.No. 18192

Order made in
W.P. (MD) No.12773 of 2020
Dated: 28.09.2020

SV2 (CO)
TR(19.01.2021) 8P 7C