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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.13278 of 2020

and

W.M.P. (MD) No.11105 and 11106 of 2020

(Through Video Conferencing)

A.Manuel Devadoss

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

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 2nd respondent PROC.No.5188/AD10/TNSTC/TNV/2020 dated 25.03.2020 and action of the respondents in proposing to recover Rs.86,400/- from the petitioner towards monetary value equivalent to "unaffected punishment period", quash the same and consequently direct the respondents to forthwith pay him all his retirement benefits including gratuity, Provident Fund, Earned leave salary, Medical leave salary, Social Security Scheme amount and refund of his contribution made to Engineering College, Medical College, Polytechnic and Institute of Road Transport, without any recovery and together with 18% interest per annum payable from 31.03.2020 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 in this writ petition is for a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 2nd respondent in PROC.No.5188/AD10/TNSTC/TNV/ 2020 dated 25.03.2020 and action of the respondents in proposing to recover Rs.86,400/- from the petitioner towards monetary value equivalent to "unaffected punishment period", quash the same and consequently direct the respondents to forthwith pay him all his retirement benefits including gratuity, Provident Fund, Earned leave salary, Medical leave salary, Social Security Scheme amount and refund of his contribution made to Engineering College, Medical College, Polytechnic and Institute of Road Transport, without any recovery and together with 18% interest per annum payable from 31.03.2020 to till the date on which the above amounts are settled to the petitioner.

2.The petitioner was working as Special Grade Driver at the respondent Transport Corporation and on superannuation, he retired from service on 31.03.2020. However, in the impugned order, the respondents also directed the Assistant Manager (ESTT) of the transport Corporation for the recovery of a sum of Rs.86,400/- being the amount towards un-implemented punishment against the petitioner. Challenging the said portion of the order, this writ petition has been filed.

3.Heard the learned counsel appearing for the petitioner, who would submit that, the issue as to whether an un-implemented punishment by way of recovery can be effected from a retired employee has already been decided in number of cases against the very same Transport Corporation and various State Transport Corporations of the State.

4.In this context, the learned counsel appearing for the petitioner relied upon the following orders:

(i)Order in W.P.(MD) No.12705/2012 dated 01.08.2013 in the case of Sathiaselvan Vs. Tamil Nadu State Transport Corporation,

(ii)Order in W.A.(MD) No.52 to 54/2015 confirming in order passed in W.P.(MD) No.12705/2012.

5.Following the said orders, on 10.04.2018, I had an occasion to consider the similar issue in a batch of cases in W.P. (MD) No.5711 of 2017 etc. batch, where, I have passed the following order:

"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.

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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."

6. Relying this decision, the learned counsel appearing for the petitioner would submit that, the petitioner is also similarly placed as against whom, since is a retired employee, no recovery can be made in lieu of the unimplemented punishment. Therefore, the said portion of the impugned order is liable to be interfered with.

7. However, the learned standing counsel appearing for the respondent Corporation, having relied upon an order passed by the learned single Judge of this Court on this issue in W.P.(MD) No.32350 of 2019 dated 18.11.2019, has submitted that, since in the said order, a different view has been taken, where, there is a clause in the settlement reached between the employer and employees under Section 12(3) of the I.D.Act, even for recovery of the unimplemented punishment awarded against the employee after retirement also, therefore the import of the impugned order herein, where, it has been directed to recover a sum of Rs.86,400/- from the petitioner, is justifiable. Therefore, the learned counsel would submit that, no interference is called for in the said portion of the impugned order.

8. I have considered the said submissions made by both sides.

9. Exactly, on the similar circumstances, last week, I passed an order on W.P.(MD) No.12773 of 2020 dated 28.09.2020, where, considering the order dated 18.11.2019 in W.P.(MD) No.32350 of 2019, I have passed the following order:

(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."

10. In view of the same, this Court feels that the petitioner is not differently placed and therefore, he is also entitled to get the same order. Accordingly, this writ petition is disposed of with the following order:

(i) The impugned order in PROC.No.5188/AD10/TNSTC/TNV/2020, dated 25.03.2020 of the 2nd respondent in respect of the recovery portion alone 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) In view of the portion of the impugned order seeking recovery of a sum of Rs.86,400/- from the petitioner is quashed, if any recovery is already made, that shall be refunded to the petitioner.

11. With this direction, this petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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/ /2021

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.

To

- 1.The Managing Director,
Tamil Nadu State Transport
Corporation (Tirunelveli) Limited,
Tirunelveli.
- 2.The General Manager,
The Tamil Nadu State Transport
Corporation (Tirunelveli) Limited,
Tirunelveli Region, Tirunelveli.
- 3.The Administrator,
Tamil Nadu State Transport
Corporation Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai, Chennai - 2.

+1cc to Mr.A.Rahul, Advocate Sr.No.19186
+1cc to Mr.R.Rajamohan ,Advocate Sr.No.18647
+1cc to SPL GP Sr.No.23635

W.P. (MD)No.13278 of 2020

and

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