BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**

W.P.(MD) No.21691 of 2019

S.Killivalavan ... Petitioner

vs.

The Management of
Tamilnadu State Transport Corporation (Kumbakonam) Ltd.,
represented by its General Manager,
Kumbakonam. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the respondent dated 29.08.2019 passed in Ref.TNSTC/Kum/Legal/12/755/2019, quash the same in so far as seeking to recover Rs.87,480/- from the petitioner as towards non-implemented increment cut and consequently, direct the respondent to settle his terminal and pension benefits.

For Petitioner : Mr.S.Arunachalam
For Respondent : Mr.D.Sivaraman
Standing Counsel

ORDER

This Writ Petition is filed to quash the order passed by the respondent in Ref.TNSTC/Kum/Legal/12/755/2019 dated 29.08.2019 and to direct the respondent to settle the petitioner's terminal and pension benefits.

2.The petitioner herein had retired from service on 31.01.2018. Though he was entitled to the terminal benefits like, Gratuity, Leave Salary and etc., the respondent had recovered a sum of Rs.87,480/- from his terminal benefits towards value of uneffected period of punishment.

3.According to the respondent, the petitioner herein was imposed with a punishment of stoppage of increment with cumulative effect during his services, which was not effected and therefore, the recovery was made.

4.The issue as to whether the respondent is entitled to recover the amount from the terminal benefits towards value of uneffected period of punishment came up for consideration before this Court in a batch of writ appeals in W.A.(MD) No.465 of 2017, etc., and by an order dated 30.06.2017, the recovery on this ground was held to be illegal and thereby, ordered for refund the amount together with 6% interest in installments. The relevant portion of the order reads as follows:

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 of 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.

5.The aforesaid decision is squarely applicable to the facts of the present case and as such, there is no justification or authority on the part of the respondent to recover the value of non implemented punishment from the retirement benefits and therefore, the petitioner would be entitled for refund the amount of Rs.87,480/- with interest at the rate of 6% per annum as held in the aforesaid decision.

6.In the light of the above observations, the order passed by the respondent in Ref.TNSTC/Kum/Legal/12/755/2019 dated 29.08.2019 is hereby set aside. Consequently, there shall be a direction to the respondent to refund the amount of Rs.87,480/- together with interest at the rate of 6% per annum from the date of recovery till the date of actual payment to the petitioner herein. The refund shall be made through six equated monthly installments in the light of the aforesaid Division Bench Judgment. The respondent shall ensure that the first installment shall be disbursed at least within a period of six weeks from the date of receipt of a copy of this order.

7.With the above directions, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The General Manager,
Tamilnadu State Transport Corporation (Kumbakonam) Ltd.,
Kumbakonam.

+1 CC to Mr.D.SIVARAMAN, Advocate (SR-4167[F] dated 31/01/2020)

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30.01.2020

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