



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.A(MD)No.1548 of 2021

and

C.M.P(MD)No.6374 of 2021

- 1.The Management of Tamil Nadu
State Transport Corporation
(Kumbakonam) Limited,
Represented by its Managing Director,
Kumbakonam.
 - 2.The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Trichy Region,
Trichy.
 - 3.The Assistant Manager (Personnel),
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Trichy Region,
Trichy.
- ... Appellants/Respondents

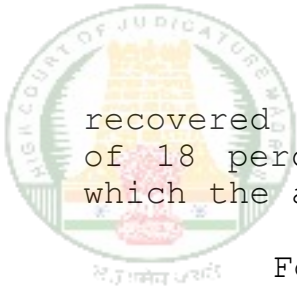
Vs.

P.Karuppaiah ... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 21.01.2020 made in W.P(MD)No.26680 of 2019 on the file of this Court.

Prayer in WP(MD). 26680/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to declaring the action of the respondents in recovering a sum of Rs.1,29,938 towards recovery of Non-Implemented Punishments of Increment Cuts from the petitioners gratuity as illegal, null and void and without jurisdiction and consequently direct the respondents to pay his



recovered amount of Rs.1,29,938 together with interest at the rate of 18 percentage p.a payable from 30.9.2016 to till the date on which the above amount is settled to the petitioner

For Appellants : Mr.P.Balasubramanian

For Respondent : Mr.C.K.Chandrasekar
for Mr.A.Rahul

JUDGMENT

(Judgment of the Court was delivered by **M.DURAISWAMY, J.**)

Challenging the order passed in W.P(MD)No.26680 of 2019 dated 21.01.2020, the respondents in the Writ Petition have filed the above Writ Appeal.

2.The respondent/writ petitioner has filed the Writ Petition in W.P(MD)No.26680 of 2019 to issue a Writ of Declaration, to declare the action of the respondents in recovering a sum of Rs.1,29,938/- towards recovery of non-implemented punishments of increment cuts from the petitioner's gratuity as illegal and consequently directing the respondents to pay the petitioner recovered amount of Rs.1,29,938/- together with interest at the rate of 18% per annum payable from 30.09.2016 to till date on which the above amount is settled to the petitioner.

3.The petitioner was employed as a Conductor in the first respondent/Corporation and owing to medical grounds, he was discharged from the services on 30.09.2016. By order dated 19.12.2016, a sum of Rs.1,29,938/- was directed to be recovered from the gratuity towards non-implemented punishments of increment cuts, which was earlier imposed against the petitioner. Against the said order, the respondent filed the Writ Petition.

4.The learned Single Judge, taking into consideration the case of both sides, allowed the Writ Petition observing that the certified standing orders does not empower the respondents/Transport Corporation to recover the amounts paid to the retired employee for recovery of non-implemented punishments of increment cuts. The learned Single Judge directed the appellants to refund the amount together with interest at the rate of 6% from the date of recovery till the date of actual payments. Challenging this order, the Transport Corporation has filed the above Writ Appeal.

5.When the Writ Appeal is taken up for hearing, Mr.C.K.Chandrasekar, learned counsel appearing for the respondent/writ petitioner submitted that the very same issue as to the refund was considered by the Division Bench of this Court in W.A

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(MD)No.1270 of 2020 dated 15.06.2021, wherein the Division Bench held as follows:-

"9. Furthermore, the question as to whether the Management would be entitled to implement orders of postponement of increment, which was not implemented during the period when the workman was in service, was also considered in the case of **J.Arumugam (supra)** and it was held that the same cannot be done and it will be without jurisdiction. The operative portion of the judgment 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."

6.While coming to the conclusion that the appellants/Transport Corporation has no jurisdiction to pass an order of recovery after retirement to recover non implemented orders of punishment to postponement of increment also followed the ratio laid down by the Division Bench of this Court in **W.A(MD)No.465 of 2017 etc., batch dated 30.06.2017 (the Management of Tamil Nadu State Transport Corporation, Kumbakonam and others Vs. J.Arumugam and another)**. The learned Single Judge while allowing the Writ Petition also followed the ratio laid down in **Arumugam's case**.

7.Mr.P.Balasubramanian, learned counsel appearing for the
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appellants has not produced any contra judgment in support of the Management.

8. In view of the reasons stated above, the following ratio laid down by the Division Bench of this Court made in W.A(MD)No.1270 of 2020 dated 15.06.2021 and in W.A(MD)No.465 of 2017 etc., batch dated 30.06.2017, we do not find any ground to interfere with the order passed by the learned Single Judge. Accordingly, the Writ Appeal is devoid of merits and the same is dismissed. The appellants are directed to refund the amount as directed by the learned Single Judge 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 (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

indu/ps

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
(Kumbakonam) Limited, Kumbakonam.
2. The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Trichy Region, Trichy.
3. The Assistant Manager (Personnel),
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Trichy Region, Trichy.

+1 CC to M/s.P.BALASUBRAMANIAN, Advocate (SR-31600[F] dated 07/10/2021)

+1 CC to M/s.A.RAHUL, Advocate (SR-31668[F] dated 07/10/2021)

W.A(MD)No.1548 of 2021

05.10.2021

RD(18.10.2021) 4P 6C

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