IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.20524 of 2012
and
M.P.No.1 of 2012

S.Duraiyan .... Petitioner

vs

1. The Secretary to Government,
   Transport Department,
   Fort St.George,
   Chennai - 9.

2. The Assistant Manager,
   Tamilnadu State Transport
   Corporation (Cbe), Coimbatore,
   No.37, Mettupalayam Road,
   Coimbatore - 43 .... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the entire records pursuant to the letter/ order of the 2nd respondent dated 10.06.2011, quash the same and consequently order directing the 2nd respondent to dispose the pension entitlements to the petitioner along with due arrears since May 2011 with interest to the period of till the date of realization.

For Petitioner : Mr.G.B.Saravanabhavan

For Respondents : Mr.S.Arumugam,
Government Advocate

ORDER

This writ petition has been filed challenging the order dated 10.06.2011 passed by the 2nd respondent directing the petitioner to pay a sum of Rs.1,30,369.50 towards stoppage of annual increment.

2. The case of the petitioner is that he was employed under the 2nd respondent Corporation and completed 36 years of unblemished record of service and retired on 31.03.2011. The petitioner is entitled to family pension with effect from 01.04.2011, but the 2nd respondent refused to pay the same. The 2nd respondent issued a letter dated 10.06.2011 stating that the petitioner has to pay a sum of Rs.1,30,369.50 towards stoppage of annual increment. Hence, this writ petition is filed with the aforesaid relief.

3. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

4. Learned counsel for the petitioner would submit that the issue involved in this writ petition is covered by the judgment passed by the Division Bench of this Court passed in W.A.(MD).Nos. 465 of 2017 etc.

batch. The relevant paragraph Nos.33 to 38 of the said judgment are extracted hereunder.

> *33. The Hon'ble Supreme Court, in Syed Abdul Qadir's case (supra), pointed out that the relief against recovery is granted by Courts, not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. In a more recent decision, in the case of Rafiq Masih (White Washer) (supra), the Hon'ble Supreme Court culled out the various situations, wherein, recoveries by the Employers would be impermissible in law. It would be beneficial to quote Para No.18 of the said judgment, which reads as follows:-*
>
> > *"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein, recoveries by the employers, would be impermissible in law:*
> >
> > *"(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
> >
> > *(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
> >
> > *(iii) Recovery from the employees, when the*

excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

34. The workmen herein would fall within the category of (iii) and (iv) referred above, as the workmen are retired employees, therefore, no order of recovery could have been passed against them. Moreover, they would also be governed by clause (ii) referred above.

35. That apart, we can take judicial notice of the fact that the Management/Corporation has not been in a position to settle the retiral benefits to its workmen on the date of retirement or soon thereafter. Hence, the workmen are compelled to approach the Court and pursuant to the orders passed by the Hon'ble First Bench of this Court, the retiral benefits of the workmen, who retired without any blemish in their service, are paid in twelve installments. We have had instances, where, Contempt Petitions were filed by the retired *workmen, as the State Transport Corporations have defaulted in adhering to the payment schedule. In such circumstances, if we weigh the scales, the workmen, obviously, have to be placed in a more advantageous position, as it would be inequitable, harsh and arbitrary to recover the monetary value equivalent to that of the amount of the increment ordered to be with held after retirement, that too, three times the monetary value equivalent, which has been held to be wholly un-sustainable and without jurisdiction. Therefore, the situation mentioned by the Supreme Court, in para 18 (v) would also stand attracted.*

36. In the preceding paragraphs, we have mentioned that the Management cannot effect such orders of recovery against retired employee, as there is no such provision under the Certified Standing Orders or in the Common Service Rules. Precisely, this was the reason for setting aside the punishment imposed on the employee of the Cooperative-Societies, in the case of S.Andiyannan (supra). It is submitted that, in certain cases, the entire retiral benefits have been withheld on the ground that orders of recovery have been passed, and in some cases, because of the recovery of three times the monetary value equivalent to the amount of increment ordered to be withheld, the entire retiral benefits, including the Gratuity, Provident Fund etc., have been *adjusted.*

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.*

38. 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. This Court is of the view that the above decision made by the Division Bench would squarely apply to the present case. In the case on hand, the petitioner had put in 36 years of service and retired on 31.03.2011. Only after his retirement, the 2nd respondent has issued a letter dated 10.06.2011 stating that the petitioner has to pay a sum of Rs.1,30,369.50 towards stoppage of annual increment. Following the judgment referred to supra, this Court finds that the order passed by the respondent, has to be set aside.

6. Accordingly, the impugned order passed by the 2nd respondent dated 10.06.2011 is hereby set aside. The 2nd respondent is directed to settle the pension entitlements to the petitioner along with due arrears from May 2011 with interest at the rate of 6% per annum till the date of realization. The said exercise shall be done within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

14.12.2022

Index:Yes/No
Speaking/Non-speaking order
vsi

To
1. The Secretary to Government,
   Transport Department,
   Fort St.George,
   Chennai - 9.

2. The Assistant Manager,
   Tamilnadu State Transport
   Corporation (Cbe), Coimbatore,
   No.37, Mettupalayam Road, Coimbatore - 43

J.NISHA BANU,J.

vsi

W.P.No.20524 of 2012

14.12.2022