



WEB COPY

W.P.No.2981 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.2981 of 2018

and

W.M.P.No.3628 of 2018

A.Tiruppathi

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport
Corporation (Salem) Ltd,
102/12, Ramakrishna Road,
Salem.

2.The General Manager,
Tamil Nadu State Transport
Corporation (Salem) Ltd,
102/12, Ramakrishna Road,
Salem.

3.The Branch Manager,
Tamil Nadu State Transport
Corporation (Salem) Ltd,
102/12, Ramakrishna Road,
Salem.

... Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned demand notice issued by the 3rd respondent vide



Ku.No.E8/1117/ Tha.A.Po.Ka.(Salem)/ 2015 dated 18.05.2015 demanding a sum of Rs.3,27,960/- from the petitioner as non implemented punishment of increment cut and consequently direct the respondents to pay the said sum of Rs.71,865/- of Social Welfare fund and Rs.2,56,095/- of gratuity amount and in total sum of Rs.3,27,960/- to the petitioner along with the other terminal benefits of IRTT, Earned Leave Salary and arrears of pension amount for 8 months available to the petitioner along with the interest at the rate of 9% from 30.04.2015 till date of payment to the petitioner.

For Petitioner : Mr.M.Karthik
For Mr.I.C.Vasudevan

For Respondents : Mr.R.Babu

ORDER

The order dated 18.05.2015 implementing the punishment of stoppage of increment by recovering the part amount at the time of retirement of the writ petitioner is under challenge in the present writ petition.

2. The petitioner was served as Conductor in the Tamil Nadu State Transport Corporation and retired from service on 30.04.2015. While the petitioner was in service, departmental disciplinary proceedings were initiated in respect of certain allegations and a punishment of stoppage of



increment for three years with cumulative effect was imposed in proceedings dated 22.02.2013 and 15.10.2013. These punishments were imposed two years prior to the retirement of the writ petitioner. The punishment became final and the authorities implemented the punishment by not granting increments to the writ petitioner. The petitioner reached the age of superannuation on 30.04.2015 and at that point of time, the authorities have calculated the balance amount of punishment and recovered the same by passing the impugned order.

3. The learned counsel for the petitioner made a submission that the authorities ought not to have imposed the punishment of stoppage of three years increment, knowing the fact that the petitioner is due for retirement of service in three years. It is further contended that there is no provision to recover the punishment amount at the time of retirement of the employee.

4. The learned counsel for the respondents objected the said contention by stating that it is not in dispute that punishment imposed on the petitioner became final and accordingly, the authorities started implementing the punishment immediately after the order of punishment. However, the petitioner reached the age of superannuation on 30.04.2015



and the part portion of the punishment alone is sought to be recovered at the time of his retirement. Whenever, the punishment of stoppage of increment was imposed and the employee retired from service during the implementation of the said punishment, then the authorities competent are empowered to recover the balance amount involved in the punishment and settle the terminal and pensionary benefits as per the rules in force.

5. The learned counsel for the petitioner relied on the judgment of the Honourable Division Bench in W.A.(MD).Nos.52 to 54 of 2015 dated 24.02.2015, wherein, the following observations are made.

“6.In paragraph No.5 of the impugned order dated 01.08.2013, the Learned Single Judge has observed as follows:

“4. When an order of penalty is passed, it is the duty of the disciplinary authority to see as to how far it could be enforced. The disciplinary authority, who imposed the penalty of stoppage of increment for four years with cumulative effect appears to have lost sight of the impending retirement of the petitioner from service. The service of persons like the petitioner are governed by the standing orders issued under the



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Industrial Employment (Standing Orders) Act. Though stoppage of increment for & specified duration, can be converted into recovery of the amount equivalent to the same, by virtue of certain provisions contained in the Fundamental Rules, in respect of Government servants, who reach superannuation before such penalties are implemented in full, the same logic may not apply to employees of Transport Corporations, The provision of the Fundamental Rules may not per se apply to Transport Corporation employees.

5. In any event, the order of penalty at least should have taken care of the contingency and made it clear that a recover of an equivalent amount will be ordered. But the penalty order dated 15.11.2011 does not state so. Even the order of retirement dated 28.07.2012 does not convert the penalty into one of recovery of the equivalent amount. Therefore, what has actually happened is a recovery without any order and that too effected after retirement. It is wholly illegal. In view of the above, the writ petition is allowed direction the



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respondent to settle all the terminal benefits without any recovery to the petitioner within period of eight weeks from the date of receipt of a copy of this order. If any amount has already been paid, the same shall be deducted. No costs."

It is not in dispute that the facts of the Writ petitions are identical and hence, the above reasoning given would hold good for the cases including the Writ petitions filed by the respondents herein, hence, all the Writ petitions were allowed and thereby the appellants / respondents were directed to settle all the terminal benefits to the respondents Writ petitioners and for others to pay the amount without any recovery within a period of 8 weeks from the date of receipt of a copy of this order."

6. Regarding the above order passed by the Honourable Division Bench, it is not in dispute that the petitioner is a workman under the Industrial Disputes Act and governed under the 12(3) Settlement, entered into between the Transport Corporation Management and the Union. Therefore, the Fundamental Rules of the Government is not applicable to the workman serving in the Transport Corporation. The said observation made by the Honourable Division Bench is of no avail to the writ petitioner.



7. Regarding the imposition of punishment, the Fundamental Rules says that the equal sum shall be recovered from the Government servants even if they reached the age of superannuation. In the absence of any similar provision to the Transport Corporation workman, the same principle is to be adopted, since the punishment cannot be left unimplemented. Once the allegations are proved and the competent authorities imposed the punishment and the punishment became final, the implementation is the consequence and thus, the authorities, who implemented the punishment, cannot be faulted.

8. Even in respect of the present writ petition, the petitioner admittedly is a workman and governed under the 12(3) Settlement. He is questioning the implementation of the punishment and the consequential recovery, thus, he has to approach the Labour Court adjudication of disputed issues if any with reference to the terms and conditions of the settlement. However, in the present case, the order of punishment was being implemented by the respondents from the year 2012 and 2013 and the portion of punishment, which was implemented at the time of retirement alone is challenged in the present writ petition.



9. This Court is of an opinion that in the event of imposing of punishment of stoppage of increment on the employee and during the course of implementation, such an employee attained the age of superannuation, the authorities are empowered to calculate the balance amount to be deducted in eve of punishment and accordingly, settle the other benefits as per the rules in force.

10. This being the principles to be adopted, this Court do not find any infirmity in respect of the orders passed and accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes

Speaking order



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S.M.SUBRAMANIAM, J.

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