



W.P.(MD) No.3332 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.3332 of 2020

and

W.M.P. (MD) Nos.2791 & 2793 of 2020

WEB COPY

J.S.Edward Santhosha Raj

... Petitioner

vs.

1.Tamil Nadu State Transport Corporation
(Tirunelveli) Ltd.,
rep.by its Managing Director
Tirunelveli Region, Tirunelveli

2.The General Manager
Tamil Nadu State Transport Corporation
(Tirunelveli) Ltd.,
Tirunelveli Region, Tirunelveli

3.The Branch Manager
Thamirabarani Depot
Tirunelveli

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records pertaining to the impugned order of the 2nd respondent in Proc.No.12568/Ad10/TNSTC/TNV/2018, dated 24.04.2018 in so far as ordering recovery of Rs.1,29,600/- towards non-implemented punishment of increment cut and decided to recover from service gratuity issue suitable direction against the respondents with in the time contemplated in the provision of law without delay.

For Petitioner : Mr.G.M.Xavier

For Respondents : Mr.R.Rajamohan for R1 & R2

Mr.M.Ramesh

Government Advocate for R3

O R D E R

The order of final settlement issued by the second respondent recovering the punishment amount is under challenge in this writ petition.

2. The petitioner is a workman employed as Driver in the respondent - Transport Corporation. The workman and the Transport Corporation are governed by the settlement made under Section 12(3) of the Industrial Disputes Act, 1947 (for brevity, "the Act") and



their service conditions are also governed under the settlement and therefore, they are bound to approach the Labour Court for redressal of their grievance.

3. In the present case, the Management imposed a punishment of stoppage of increment for three years with cumulative effect on account of the proved irregularities. The punishment became final and therefore, the punishment is to be implemented. In view of the fact that the petitioner was due to retire from service, the amount equivalent to that of the punishment i.e. stoppage of increment for three years with cumulative effect was adjusted in the terminal benefits and the balance amount was settled in favour of the petitioner. It is brought to the notice of this Court that the petitioner has also given consent for adjusting the amount equivalent to that of the punishment of stoppage of increment for three years with cumulative effect.

4. The learned counsel for the petitioner made a submission that even if a punishment of stoppage of increment for three years with cumulative effect was imposed in the departmental disciplinary proceedings and if the employee is due to retire from service, then the amount cannot be recovered from the employee concerned after his retirement. In other words, it is contended that the punishment became lapsed and it cannot be implemented at all. In this regard, the learned counsel for the petitioner relied on the Judgment of the Honourable Division Bench of this Court, dated 30.06.2017, in W.A. (MD) No.465 of 2017 etc. batch, wherein the Division Bench allowed the writ appeals in part and directed the Authorities to settle the terminal benefits. In paragraph No.5 of the said Judgment, the Honourable Division Bench has observed as follows:

"5. ...Therefore, we have no hesitation to hold that the orders passed by the Management, recovering three times the monetary value equivalent to the amount of increment, are without jurisdiction, as there is no such provision in the Certified Standing Orders, enabling the Management to pass such orders. Therefore, on that ground, the impugned orders are required to be set aside."

5. In yet another case, in W.A.(MD) No.1045 of 2020, an order was passed by the Honourable Division Bench on 30.07.2021. However, the workman filed Rev.Aplc.(MD) No.68 of 2021 and the said review application was allowed by the Honourable Division Bench and now, the writ appeal is pending for adjudication.

6. Relying on these decisions, the learned counsel for the petitioner reiterated that the punishment of stoppage of increment after retirement of the petitioner cannot be implemented at all.



7. A question arises whether the punishment imposed by the employer can be implemented on account of forthcoming retirement. This Court is of the considered opinion that the employer is empowered to impose punishment in proportionate with the gravity of the proved irregularities or offences. Once the punishment is issued and the same became final, then it is to be implemented in all respects. In the event of non-implementation of the punishment, the very purpose and object of the prescription of the punishment will be defeated. Therefore, the employer / Competent Authority is empowered to implement the punishment.

8. The next question arises under what manner the punishment is to be implemented. Again it depends on the nature of the punishment imposed on the workman by the employer. In the event of punishment of censure, the same may not have any monetary implications. In the event of reversion, the punishment can be implemented with immediate effect. However, in respect of stoppage of increment for one year, two years or three years, with or without cumulative effect, it involves monetary implications and so also the punishment of reduction of pay. In all such punishments, which involve monetary implications, the amount equivalent to that of the punishment is to be recovered from the workman, if such workman is due to retirement. In the event of non-recovery, not only the very purpose and object of the punishment, but also the entire departmental disciplinary proceedings will be defeated. The employee, who committed an offence, once imposed with a punishment, the same is to be implemented in all respects and the said punishment cannot be lapsed automatically or on account of the retirement of the employee concerned. Even in such cases, the employee is due to retire, the amount equivalent to that of the punishment is to be calculated by the employer and the such amount is to be recovered in order to complete the departmental disciplinary proceedings in all respects.

9. This being the principles to be followed, mere observations made in the Judgment in the writ appeal are of no avail to the petitioner when the basic principles of law require punishment or conviction is to be implemented in the manner known to law. As far as the punishment regarding monetary implications are concerned, in the event of retirement, such monetary implications are to be calculated and to be recovered and there is no question of automatic lapse of punishment and the punishment became final and the same is issued after conducting enquiry by initiating departmental disciplinary proceedings.

10. The learned counsel for the petitioner raised another doubt whether the retired workman is entitled to file a petition under 2(k) of the Act.



11. Let us now consider the scope of Section 2(k) of the Act, which is extracted hereunder:

"(k) "industrial dispute" means any dispute or difference between employers and employers or between employers and workmen; or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person."

12. The above provision unambiguously defines any dispute between employers and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. The term "the conditions of labour of any person" includes all the benefits of the workmen as well as the retired workmen. Therefore, if any person aggrieved in respect of the action initiated by the employer in terms of the employment or with the conditions of labour, then the industrial dispute is maintainable before the Labour Court and the Labour Court cannot return the petition filed by the retired workman more so in respect of the disputes relating to the terms of employment or conditions of labour. In the present case, the service in the Transport Corporation is a pensionable service and therefore, a lien continues even after retirement of the employees. The retired employees are getting pension throughout their life and therefore, they have got duties and responsibilities. Under these circumstances, Section 2(k) of the Act stipulates that any person can approach the Labour Court in order to resolve or raise a dispute with reference to the terms of employment or the conditions of the labour. The term "any person" cannot be interpreted in a narrow manner and it is to be extended in respect of the retired workmen, who all are claiming certain benefits or otherwise or aggrieved from and out of the actions of the Management with reference to the terms of employment. There is no ambiguity as the retired workmen are entitled to approach the Labour Court under Section 2(k) of the Act. Therefore, the petitioner in order to redress his grievance has to approach the Labour Court at all circumstances. The Writ Court cannot conduct a roving enquiry in respect of such disputes, which all are governed by the settlement made under Section 12(3) of the Act. When there is an alternative efficacious remedy available to redress the grievance, the High Court need not entertain a writ petition in a routine manner, which would not only overburden the High Court, but also deprive the workmen to adjudicate the issues with reference to the documents and evidences, including oral evidence. The benefit of elaborate adjudication need not be denied to the workmen unnecessarily by the High Court. Therefore, the petitioner is at liberty to approach the Labour Court for the purpose of redressal of his grievance.



13. The principles considered in the aforementioned paragraphs are only to clarify the statute and certain propositions regarding merits and the Labour Court is bound to consider the case independently and with reference to the documents and evidences, if any, submitted at the time of filing any application by the aggrieved person.

14. In respect of the workmen governed by the settlement made under Section 12(3) of the Act, this Court has elaborately considered the principles, based on the decisions of the Honourable Supreme Court, in the case of **P.Muthukrishnan v. Management of T.N.S.T.C. (Madurai) Ltd.**, reported in **2019-IV-LLJ-152 (Mad)**, wherein maintainability of petitions have also been considered and the similar view has been reiterated by the Honourable Division Bench of this Court in the Judgment dated 30.07.2021 in W.A.(MD) No.1045 of 2021.

15. For all these reasons, the petitioner is at liberty to approach the Labour Court for redressal of his grievance in the manner known to law.

16. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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To:
The Branch Manager,
Thamirabarani Depot,
Tirunelveli.

+1 CC to M/s.R.RAJAMOHAN, Advocate (SR-13334[F] dated 22/03/2022)
+1 CC to M/s.SPL GP (SR-13533[F] dated 22/03/2022)

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ss (CO)

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