



W.P(MD)No.15970 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15970 of 2022

and

W.M.P.(MD)Nos.11542 & 11544 of 2022

R.Parameswaran

... Petitioner

Vs.

1.The Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
Rep. by its Managing Director,
Tirunelveli.

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

3.The Deputy Manager,
The Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
Tirunelveli Region,
Tirunelveli.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent in Proc.No.10083/PaAa/E10/TNSTC/Thili/2020, dated 30.12.2020, quash the



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same and consequently, direct the respondents to refund the recovered amount of Rs.1,72,800/- to him with interest at 18% per annum payable from 30.04.2022 to till the date on which the above amount are settled to me.

For Petitioner : Mr.V.Ajay Khose

for Mr.A.Rahul

For Respondents : Mr.D.Jebaraj

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned standing counsel appearing for the respondent corporation.

2. The petitioner joined the respondent corporation as driver on 24.06.1994. He was promoted as selection grade driver and retired from service on 30.04.2020. During his service, disciplinary action was initiated against him for certain acts of misconduct. He was issued with punishment of stoppage of increment for a period of two years with cumulative effect on 07.11.2018. Yet another punishment of stoppage of increment for a period of two years with cumulative effect was issued on 17.07.2019. The petitioner was charged with having driven the vehicle in a rash and negligent manner. Even though such twin punishments of stoppage of increment was imposed on the petitioner, they could not be implemented in full on account of the retirement



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of the petitioner on reaching the age of superannuation on 30.04.2020. The Management quantified the un-implemented punishment in monetary terms and recovered the same from the writ petitioner's terminal benefits. This amounted to Rs.1,72,800/-. Seeking payment of the recovered amount, this Writ Petition has been filed.

3. The learned counsel appearing for the petitioner took me through the averments set out in the affidavit filed in support of the writ petition. He placed reliance on the order dated 30.06.2017 made in W.A.(MD)No.465 of 2017 etc., batch.

4. The respondents have filed a detailed counter affidavit. The learned standing counsel took me through the averments set out therein. His primary contention is that the writ petitioner had given a letter of undertaking based on which recovery was effected and that it is not open to the writ petitioner to now resile from the same. He endeavoured to distinguish the decision of the Hon'ble Division Bench. He pointed out that as per Common Service Rules, recovery from pay to the extent necessary of the monetary value equivalent to the amount of increment ordered to be withheld where such an order cannot be given effect to is permissible. He also submitted that in this case, on account of



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the writ petitioner's conduct, the Management had suffered loss. Placing reliance on Section 4(6) of the Payment of Gratuity Act, 1972, the learned standing counsel submitted that it is open to the Management to forfeit that portion of the gratuity equivalent to the loss caused to the organization. He also contend that since the statutory scheme set out in the Payment of Gratuity Act, 1975 provides for effective alternative remedy, it is not open to the writ petitioner to maintain this writ petition. A host of other contentions were also advanced. He pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. I decline to consider all but one contention advanced by the learned standing counsel appearing for the respondent corporation. This is because, the Hon'ble Division Bench in the aforesaid order dated 30.06.2017 in W.A.(MD)No.465 of 2017 etc., batch had already settled the issue.

6. When such an authoritative pronouncement had been given by the Hon'ble Division Bench, I am clearly bound by the same. Of-course, one contention was not urged before the Hon'ble Division Bench. The question is whether it is open to the management to make such recovery if the employee concerned gives an undertaking. The specific stand taken in the counter is that the writ petitioner had consented for such recovery.



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7. It is beyond dispute that the Management and the workman are not at the same level. When the employee reached the age of superannuation, he would obviously be anxious to receive the terminal benefits. If the Management takes a stand that unless he signs on the dotted lines, he will not be disbursed with terminal benefits, the workman has little choice left. The undertaking given in such circumstances cannot be put against the workman or employee.

8. The stand of the management is that the writ petitioner had waived his right to challenge the recovery made by the Management. As rightly pointed out by the learned counsel appearing for the petitioner, only if the Management has a right to effect such recovery, then and then alone, the question of waiver will arise. In view of the pronouncement of the Hon'ble Division Bench, the act of the Management in quantifying the un-implemented increment cut in monetary terms and recovering the same from the terminal benefits of the workman / employee has been held to be illegal. Therefore, accepting the contention of the learned standing counsel would perpetuate an illegality.

9. I therefore have no hesitation to come to the conclusion that this writ petition cannot be defeated by citing the letter of undertaking said to have been



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given by the writ petitioner. As regards the objection anchored on the ground of existence of alternative remedy, again I cannot endorse the same. This is because, the case of the workman is based on undisputed facts. Therefore, the maintainability of the writ petition cannot be challenged.

10. Looked at from any angle, I have to necessarily hold that the order of recovery made by the respondent Management is illegal. I therefore direct the respondents to pay the petitioner recovered amount of Rs.1,72,800/- with interest at the rate of 6% from the date of recovery till the date of payment.

11. This Writ Petition is allowed. No costs. Consequently, connected miscellaneous are closed.

27.09.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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