BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.21366 of 2022
and
W.M.P.(MD)No.15534 of 2022

D.Santhanaraj ... Petitioner

Vs

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

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

3.The Assistant Manager (Personnel and Administration),
The Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Kumbakonam Region,
Kumbakonam..

4.The Administrator,
The Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar Illam, Pallavan Salai,
Chennai - 600002. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, declaring the action of the respondents in making recovery of Rs.4,43,424/- towards monetary value equivalent to non-implemented punishment of increment cuts from the petitioners gratuity, monthly pension and other terminal benefits, as illegal, void, arbitrary and without jurisdiction and consequently direct the respondents to settle entire terminal benefits payable to him including gratuity, monthly pension etc., with 6 percent interest payable from 31.05.2019 to till the date on

For Petitioner : Mr.A.Rahul

For Respondents : Mr.K.Jagadees Balan,
Standing Counsel for R1 to R3.
Mr.S.C.Herold Singh,
Standing Counsel for R4.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner joined the respondent corporation as a Driver in the year 1985. He retired from service on 31.05.2019. At the time of his retirement, penalty of stoppage of increment with and without cumulative effect for a period of 285 months and 39 months respectively remained unimplemented. Their monetary equivalent was quantified as Rs.4,43,424/. As a result, the petitioner's terminal benefits were also withheld. Challenging the stand of the respondents, the present writ petition has been filed.

3.The issue on hand is no longer res integra. The Hon'ble Division Bench vide order dated 15.06.2021 made in W.A.(MD)No.1270 of 2021 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:*
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> > *"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."

10. In the light of the above legal principle and having found that there is no provision in the Certified Standing Orders to pass orders of recovery at the verge of retirement or after retirement proposing to recover the unimplemented orders of punishment of postponement of increment, is wholly without jurisdiction. Hence, for the reasons set out by the learned Single Bench as well as the reasons which we have observed supra, the order passed in the writ petition does not call for interference. The learned Single Bench has allowed the writ petition as prayed for, which would mean that the respondentworkman is also entitled to claim interest at 18% per annum. In our considered view, 18% interest would be too exorbitant and we are of the view that a time frame can be fixed for the respondent-Management to settle the amount of Rs. 75,900/- and accordingly directed to pay the said sum within a period of 12 weeks, failing which, the Management is directed to settle the amount together with the interest at the rate of 6% per annum from the date of order passed in the writ petition, namely, 28.07.2020, till the claim is settled."

4.Respectfully applying the aforesaid ratio, I declare that the action of the respondents in recovering the monetary value equivalent to non-implemented punishment of increment cut from the writ petitioner's terminal benefits is illegal. The respondents are directed to settle the petitioner's entire terminal benefits within a period of twelve weeks from the date of receipt of a copy of this order. The petitioner will also be entitled to interest at the rate of 6% per annum from the date of retirement till the date of actual payment on the delayed disbursement.

5.The writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

22.09.2022

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

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