BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.17123 of 2015
and
M.P.(MD).No.1 of 2015

R.Aundichamy ... Petitioner

Vs.

1.The General Manager,
Tamil Nadu State Transport Corporation,
Dindigul Division,
Dindigul.

2.The Superintendent,
First Grade,
Central Appointment Division (Legal Cell),
Tamil Nadu State Transport Corporation,
Head Office, Dindigul.

3.The Superintendent,
First Grade,
Administrative Department,
Tamil Nadu State Transport Corporation,
Head Office, Dindigul. ... 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 relating to the impugned order of the first respondent in ref.Ma.Ni.Pi/E5/521 dated 18.08.2015 quash the same and consequently direct the respondents corporation to refund the deductions already made from the petitioner's salary from 01.09.2010 to the tune of Rs.88,450/- in view of the modified order dated 30.10.2008 in ID No.99 of 2005 on the file of Labour Court, Trichy.

For Petitioner	:	Mr.S.Arunachalam
For R-1	:	Mr.Rajasekar for Mr.J.Senthil Kumaraiah
For R-2 and R-3	:	Mr.J.K.Jayaselan, Government Advocate (Civil Side).

ORDER

This Writ Petition has been filed to quash the impugned order dated 18.08.2015 and consequently direct the respondents to refund the deductions already made from the petitioner's salary from 01.09.2010 to the tune of Rs.88,450/- in view of the modified order dated 30.10.2008 in ID No.99 of 2005 on the file of the Labour Court, Trichy.

2. The brief facts of the case are that the petitioner was appointed as Conductor in the respondent Transport Corporation on 18.01.1980 and his service was regularized on 01.02.1982. On completion of eight years, the petitioner was conferred with Selection Grade on 01.02.1988 and further completion of eight years was granted Special Grade on 01.02.1996 and his superannuation was on 31.04.2016. The present writ petition is filed when only seven months is left.

3. In the year 2005, a charge memo was issued to the petitioner, which ordered stoppage of increment for one year with cumulative effect. The petitioner challenged the punishment in I.D.No.99 of 2005 and the Labour Court, Trichy modified the punishment on 30.10.2008 as stoppage of increment for one year without cumulative effect. The respondents started withholding the petitioner's increment. The respondents Corporation have not refunded the deductions and withheld the salary despite setting aside the order of the punishment. The respondent corporation did not challenge the Labour Court order by way of appeal. Thus, the respondent corporation is liable to refund the deductions made from 01.09.2010 to the tune of Rs.88,450/-.

4. In the meanwhile, the third wage settlement was arrived at on 01.09.2010 and the pay scale was revised to the Conductors including the petitioner. The respondent corporation refixed the scale of pay at Rs.12,112.51 and the petitioner was receiving the revised scale of pay for the past five years. While so, the first respondent has issued notice dated 29.07.2015 stating that they have wrongly paid excess salary of Rs.88,450/- from 01.09.2010 and it was proposed to deduct in eight equal monthly installments. Since the petitioner’s superannuation falls on 31.04.2016, the respondents directed the petitioner to submit his explanation. The petitioner submitted his explanation on 08.08.2015 stating there was no excess salary paid by the respondents and the respondent Corporation is liable to pay the deducted amount which was already made from petitioner's salary, in view of setting aside of the order of stoppage of increment by the Labour Court. The petitioner also submitted his explanation based on 12(3) Settlement arrived on 01.09.2010. Without considering the petitioner's explanation, the present impugned order dated 07.09.2015 was passed and the petitioner has submitted further explanation/representation stating that the third wage review was made on the basis of 6+7+8+8+3 and

the petitioner's scale of pay was fixed accordingly and in view of the same, the alleged stoppage of increment for one year was elapsed. The petitioner relied on judgment reported in *2009 (3) SCC 475* and submitted since the excess amount is not paid based on the petitioner's misrepresentation or fraud, the respondents are not empowered to deduct under the guise of wrong fixation and therefore prayed to allow the Writ Petition.

5. The respondents had filed a counter stating that all the employees are covered under 12(3) Wage Settlement of Industrial Dispute Act. The 12(3) Wage Settlement is being conducted once in three years between the Trade Unions and respondent corporation, most of the new introduced schemes / Alterations / Developments are being announced among the State Transport Corporation based on the settlement agreed. One of the announcement in pay fixation is the review benefits already provided that is 6+8+10 years was changed as 6+8+8+3 years, after that the review benefit is maintaining in 6+7+7+7+5 years by the implementation of 12(3) Wage Settlement 2013. The petitioner got first review benefits after eight years that is on 01.08.1986, but the petitioner got second review benefit on 01.08.1995, due to operation of one year increment cut with cumulative effect. In order to implement the 12(3) Wage Settlement 2010, the petitioner review benefits were revised as 6+7+8+8+3 basis. By this way of implementation, the petitioner's second review benefit falls during 1994 inclusive of one year with cumulative effect (WCC operative) and third review benefit due falls during 2002. At that time, the petitioner was imposed an increment cut with cumulative effect. Hence, the third benefit review was provided to the petitioner during 2010, as per the implementation of 12(3) Wage Settlement 2010 but not taking into account the operative cut by oversight. By this grant of third review benefit, the respondent corporation given an excessive salary of Rs.540/- per month to the petitioner's salary from 01.09.2010 due to the revision of enhanced basic pay. After audit verification, it was noted that a sum or Rs.88,450/- was paid as excessive salary to the petitioner and the same was recovered from his salary vide order dated 18.08.2015 after issuing proper notice. The petitioner approached the Labour Court, Trichy in I.D.No.99 of 2005 for his misconduct of unauthorized absence and the punishment was modified as one year increment cut without cumulative effect. Along with this punishment, there are other punishments which are operative against the petitioner at that time. Therefore, the petitioner approached High Court challenging the impugned order dated 18.08.2015 and this Court by its order dated 23.09.2015 has passed an interim stay. The respondents prayed to dismiss the writ petition.

6. Heard Mr.S.Arunachalam, learned counsel for the petitioner and Mr.Rajasekar for Mr.J.Senthil Kumaraiah, learned counsel for the first respondent and Mr.J.K.Jayaselan, learned Government Advocate for the second and third respondents.

7. The petitioner contented that while considering the revision of pay under 12(3) Wage Settlement, the respondents have not taken into account the punishment modification by the Labour Court. The contention of the petitioner as stated in the affidavit is as under:

> *"8. I state that as per the service jurisprudence and settled principles of law, the principle of recovery of amount paid by in mistake will not apply when a higher pay scale was fixed and granted by an evident mistake".*

8. The contention of the petitioner is that the respondents have deliberately committed a mistake and if any mistake is committed by the respondents, the same shall not be recovered from the employee. The respondents have paid the said excess amount with a knowledge, that the petitioner has not committed any misrepresentation or fraud against the respondents. The contents of the affidavit give a picture that the respondents have fixed the said wrong fixation with absolute knowledge. This Court cannot close its eyes that the petitioner also had the knowledge of wrong fixation. There is social responsibility on all employees to bring it to the knowledge of the employer if there is any wrong fixation and should take steps to rectify the mistake. Any excess payment would be illegal in the hands of the employee, the said illegality cannot have any legal sanctity since it is fixed by mistake by the employer. Moreover all fixations would be made with a condition that if any mistake is found on a later date, the same would be adjusted and the employer has every right to recover the amount. This is exactly contemplated and referred in the case of High Court of Punjab and Haryana and others VS Jagdev Singh reported in 2016 (14) SCC 267. In this case also it has been specifically stated if there is any wrong fixation, it would be recovered from the employee. When such a condition is prescribed in all the revision and the employer has every right to recover. The Hon'ble Supreme Court has taken note of the judgment rendered in State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) reported in 2015 1 LLJ 495 in Jagdev Singh case and has **distinguished and clarified** the Rafiq Masih case. Therefore, the contention of the petitioner based on Rafiq Masih cannot be taken into account. The respondents have every right to recover any wrong fixation and excess money from its employers. The petitioner is bound to pay the illegal amount in his hands. In a similar Writ Petition filed before Madurai Bench of Madras High Court in W.P. (MD). No.14898 of 2015 between A. Amutha Vs. The Principal Accountant General and another, this Court has held by following the Hon'ble Supreme Court judgment rendered in Jagdev Singh case, if the official respondents disburse any monetary benefits with a condition that any payment found to have been made in excess would be adjusted / recovered, then the employer is bound

to recover the amount. The relevant portion of the Jagdev Singh's case is extracted hereunder:

> *"5. In the above judgment, it has been categorically stated that when there is a mention of recovery at the time of revising the salary of an employee to the effect that any payment found to have been made in excess would be liable to be adjusted, then the employer can recover the amount. Admittedly, in this case, while revising the salary of the petitioner on 14.06.2013 and granting the monetary benefit to the petitioner, the second respondent has clearly mentioned that if the fixation of salary of the petitioner is found to be wrong in future, the same would be recovered from her in a single installment. Therefore, it is clear that the petitioner was put on notice of recovery, while issuing the order of revision of her salary as early as on 14.06.2013, as per the principle laid down by the Hon'ble Supreme Court and hence, this Court is not inclined to interfere with the impugned order of recovery dated 11.05.2015."*

9. Therefore, there is no impediment in the recovery order. For all the reasons, this Writ Petition is liable to be dismissed and accordingly, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

Nsr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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