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W.P.No.2713

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

W.P.No.27138 of 2018

K.T.Aravindhatchan

... Petitioner

Vs.

The Management of  
Tamilnadu State Transport Corporation (Kovai) Ltd  
Rep by its Managing Director  
Coimbatore

... Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondent to refund the amount of Rs.38,236/- recovered from the petitioner in the name of unimplemented punishment of increment cut together with 18% interest per annum.

For Petitioner : Mrs.Poonkondi  
for  
Mr.V.Ajoy Khose

For Respondent : Mr.A.Sundaravadhanan

**ORDER**

The Writ Petition has been filed for an issuance of a Writ of Mandamus directing the respondent to refund the amount of Rs.38,236/- recovered from the petitioner in the



2. The brief facts of the case is that the petitioner is that the petitioner joined as conductor in the respondent Corporation on 17.11.1980 and after completion of 33 years of service he retired as 'Special Grade Conductor' on 30.06.2013 attaining the age of superannuation. The petitioner was asked to pay Rs.38,236/- to get the terminal and pensionary benefits. The petitioner paid the amount on 21.10.2013 and when he enquired he was told that the amount has been recovered as towards the non-implemented punishment of increment cut impose on the petitioner. The petitioner would further submit that if the respondent was legally entitled to recover the amount he could have issued separate order for making such a recovery. The petitioner continuously approached the respondent to refund the amount and sent a representation dated 18.06.2018 requesting to refund the amount. Hence, the present Writ Petition.

3. The learned Standing Counsel appearing for the respondent Corporation denies all the averments raised by the petitioner relying on the Annexure V of the Common Service Rule under the Discipline and Appeal Rules, the petitioner is entitled to punishment and hence the amount was recovered from the petitioner and prayed for



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dismissal of the Writ Petition.

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4. Heard Mrs.Poonkodi for Mr.V.Ajoy Khose,learned counsel for the petitioner and Mr.A.Sundaravadhanan, learned Standing Counsel for the respondent Corporation.

5. The Division Bench of Madurai Bench of Madras High Court, while dealing with a similar case has dismissed the Writ Appeal filed by the respondents Transport Corporation. The crux of the judgment passed In W.A.(MD)No.1270 of 2020 dated 15.06.2021 reads as follows:

*8. Therefore, the contention of the appellant-Management that Clause 8 of the 12(3) Settlement provides for passing such an order in an Organisation, is stated to be rejected. Clause 8 cannot be used as a tool or a source of power to recover money from the workman, especially, when the Settlement only states that it can be done so, if there is a provision under the Common Service Rules or the Standing Orders.*

*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*



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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:

“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



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*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 respondent~workman 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*



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*settled.*

*11. In the result, this Writ Appeal stands dismissed. No costs. ”*

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6. In view of the above said judgment, this Writ Petition is allowed and the respondent is directed to refund the amount of Rs.38,236/- recovered from the petitioner at the rate of 6% from the date of filing the petition to till date within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

**08.11.2023**

Index:Yes/No;  
Internet:Yes/No  
Speaking / Nonspeaking order  
kpr

To

The Managing Director  
Management of Tamilnadu State  
Transport Corporation (Kovai) Ltd  
Coimbatore



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**V.BHAVANI SUBBAROYAN J.**  
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