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W.P.No.29738 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.29738 of 2018

N.Rajendran

...Petitioner

Vs.

1.Metropolitan Transport Corporation Ltd.,
Rep. by its Managing Director,
Pallavan Illam, Anna Salai,
Chennai – 600 002.

2.Senior Deputy Manager (HR),
Metropolitan Transport Corporation Ltd.,
Pallavan Illam, Anna Salai,
Chennai – 600 002.

2.Tamilnadu State Transport Corporations'
Employees Pension Fund Trust,
Rep. by its Administrator,
Thiruvalluvar Illam, Pallavan Salai,
Chennai – 600 002.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 24.12.2016 in Se.Mu.no.28287/Sa.pi (O Na)2/MTC/2015 passed by the second respondent, quash the same and consequently pay the petitioner all his terminal benefits such as monthly



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pension, commuted value of pension, provident fund, gratuity, family benefit fund, the amount payable under the Social Security Scheme, IRT contributions, the amount payable under the Post Retirement Benefit Scheme, leave salary, difference in salary for the month of June 2018, etc. together with interest at the rate of 12% per annum within a specified time.

For Petitioner : Mr.R.Krishnaswamy

For Respondents : Mr.R.Balaji

ORDER

Heard Mr.R.Krishnaswamy, learned counsel for the petitioner and Mr.R.Balaji, learned counsel for the respondents.

2. A major portion of the petitioner's benefits have not been settled by the respondent Corporation on the ground that the monetary value, equivalent to the non-implemented punishment of stoppage of increment, needs to be recovered. This proceeding of the respondent Corporation dated 24.12.2016 is put under challenge in the present writ petition.

3. The authority of the Transport Corporation, to withhold or recover any monetary value equivalent to the non-implemented



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punishment of stoppage of increments, has already been dealt with by this Court in various decisions and held to be illegal.

4. The reason stated before this Court has come up for consideration in various decisions, as to the right of the Transport Corporation to deduct the monetary value equivalent to non-implemented punishment of increment cut and it was held therein, that such recovery is impermissible in law. In one such decision of the Hon'ble Division Bench of this Court, in the case of ***The State Express Transport Corporation Vs. G. Senthil & another*** passed in ***W.A.(MD).No.1270 of 2020, dated 15.06.2021***, this proposition was upheld in the following manner:-

"4. The appellant-Corporation is on appeal before us by contending that though the decision of the Division Bench in the case of J.Arumugam (supra), was confirmed by the Hon'ble Supreme Court, since the Special Leave Petition in SLP(C) No.1755 of 2018 was dismissed on 09.02.2018, all the Employees Unions have signed a Settlement under Section 12(3) of the Industrial Dispute Act 1947, dated 04.01.2018 and in terms of Clause 8 therein, the appellant-Corporation is entitled to recover the



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said amount with regard to the unimplemented order of punishment passed against the workmen postponing the increment.

5. First issue to be considered in this appeal is whether the judgment rendered by the Court can be settled or not by entering into the settlement under Section 12(3) or 18(1) of the Industrial Dispute Act, 1947. The Settlement signed between the employer and the employee can at best have the binding inter-partly qua the claims made by the workmen against the management. No settlement can be entered into between the parties to nullify a judgment which has been rendered interpreting the Statutory Rules and Regulations, which are applicable to the Organisation. Therefore, the argument of the appellant that the settlement would supersede the decision on the legal issue is not acceptable and it is rejected.

6. Be that as it may, if we examine the condition No.8 of the 12(3) of the Industrial Dispute Act 1947 Settlement, we find that there is no such leverage given to the appellant-Management. The said Clause 8 reads as follows:



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"பணிஓடிநடுவின் பொழுது ஏற்கனவே வழங்கப்பட்ட Increment Postponement போன்ற தண்டனைகள் நடைமுறைப்படுத்தப்பட இயலாத நிலையில் பொது பணி விதிகள் மற்றும் நிலையாணை விதிகள் அடிப்படையில் Increment தொகைக்கு ஈடான தொகை மட்டுமே பிடித்தம் செலுத்யப்படும். இறந்த தொழிலாளர்களைப் பொறுத்தவரையில் மேற்சொன்ன பிடித்தம் செலுத்யப்படமா ட்டாது."

7. The above condition states that the increment postponement orders which could not be implemented prior to the superannuation of the employee can be implemented, but only in accordance with the Common Service Rules and the Standing Orders which are applicable to the organisation. This question was considered in the case of **J.Arumugam (supra)**, as first among the several issues and it was held that there is no provision in the Certified Standing Orders enabling the Management to pass orders of recovery as passed in the instant case. In fact, the Court held that the Common Service Rules are not applicable to the workmen and there is no Standing Order framed by the Management and only Certified Standing Orders are in vogue and the Certified Standing Orders do not provide for any such recovery. The operative portion of the judgment reads as follows:



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"5. Before deciding the merits of the case, firstly, it has to be seen, as to, under which Rule, the workmen of the Management are governed by. It is admitted by the Management that the workmen are governed by Certified Standing Orders, framed for the employees of the Management/Corporation by the Appellate Authority under the Industrial Employment (Standing Orders) Act 1946 (supra), but, contrary to the same, the impugned orders of recovery were passed by the Management, by following the provisions of the Common Service Rules, viz., Rule 4 (1) (e). Pitted with this position, the learned counsel for the Management submitted that the Management has no option, except, to opt for Rule 4 (1) (e) of the Common Service Rules, for, the workmen suffered punishment of withholding of increment, which could not be given effect to, as the workmen did not have the requisite remaining years of service. That apart, such a remedy is not found in the Certified Standing Orders. This submission is untenable, for the reason that, when the Management has admitted that the workmen are governed by the Rules framed under the Certified Standing Orders, in violation to the same, it cannot follow Rule 4 (1) (e) of the Common Service Rules, by invoking Clause 25 (1) (iv) (b) of the Certified Standing Orders. 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."



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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 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 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



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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 settled...."

5. The aforesaid extract is self-explanatory. As such, the stand taken by the learned counsel for the respondents that they would be entitled to recover the monetary value equivalent to the non-implemented punishment of stoppage of increment and a clause in 12(3) settlement, cannot be sustained.

6. At this juncture, the learned counsel for the respondents Corporation submitted that out of the terminal benefits, the commuted



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value of pension, including the monetary pension, has been received by the petitioner herein.

7. Since the other benefits, including the gratuity has been withheld illegally, the petitioner would be entitled for interest on the withheld amount at the rate of 10% per annum, as per the provisions of the Payment of Gratuity Act.

8. In the light of the above observations, there shall be a direction to the respondents herein, to forthwith pass orders, disbursing the entire terminal benefits of the petitioner herein, including the pensionary benefits, along with interest at the rate of 10% per annum, after deducting any part of the terminal benefits that might have already been paid to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands allowed. No costs.

16.02.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-speaking order
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To

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Metropolitan Transport Corporation Ltd.,
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Chennai – 600 002.
- 2.The Senior Deputy Manager (HR),
Metropolitan Transport Corporation Ltd.,
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M.S.RAMESH,J.

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