BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.08.2023

PRONOUNCED ON : 04.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.16515 of 2023

Karuthapandi ... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Kumbakonam Division,
Kumbakonam.

2.The General Manager,
Tamil Nadu State Transport Corporation Limited,
Karaikudi Region,
Karaikudi,
Sivagangai District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to provide 1st and 2nd salary's reviews of the petitioner's employment in the respondents office as per law and all backwages for the same with all relevant monetary benefits as per the same fixed reviews based on the representation of the petitioner on 20.06.2023.

For Petitioner : Mr.R.Senthil Kumar

For Respondents : Mr.K.Jagadees Balan
Standing Counsel

ORDER

The prayer of the writ petition is as follows:

> "The present Writ Petition has been filed by the petitioner for issuance of a Writ of Mandamus, directing the respondents to provide 1st and 2nd salary's reviews of the petitioner's employment in the respondents office as per law and all backwages for the same with all relevant monetary benefits as per the same fixed reviews based on the representation of the petitioner on 20.06.2023."

2.Heard Mr.R.Senthil Kumar, learned counsel appearing for the petitioner and Mr.K.Jagadees Balan, learned Standing Counsel appearing for the respondents and perused the materials available on record.

3.The petitioner was appointed as a TNSTC Bus Driver on temporary basis in the Transport Corporation on 22.08.2007. Presently he is working in Sivagangai Branch of the second respondent office. On the completion of 6 years of service, the respondent Corporation ought to have given the first salary review to the petitioner and on the completion of the next 7 years from the date of the first salary review, the respondent Corporation ought to have given the second salary review to the petitioner. As on date, the petitioner has completed 15 years of service in the respondent Corporation. The respondent Corporation had imposed one punishment of postponement of one year increment with cumulative effect in the salary of the petitioner vide order dated 10.02.2012. Though the petitioner was appointed on 22.08.2007, due to the imposition of punishment of postponement of one year increment with cumulative effect on 10.02.2012, the first review of the salary of the petitioner could not be done by the Corporation on the stipulated date of 22.08.2013. Since his salary increment was postponed with cumulative effect for one year, his salary ought to have been reviewed for the first time by the respondent Corporation at least on 22.08.2014. But unfortunately before two months of the said date, on 07.06.2014, the petitioner committed a fatal accident, as a result of which an enquiry was initiated by the respondent Corporation, on the basis of which a punishment of postponement of five years increment with cumulative effect was inflicted on the petitioner on 30.11.2017. The petitioner preferred an appeal as against the same, in which the punishment was reduced to postponement of four years increment with cumulative effect vide order dated 31.03.2018. Hence after a period of 2 months + 4 years the first salary review of the petitioner was fixed on 01.05.2022.

4.However the learned counsel for the petitioner contended that the respondent Corporation ought to have given the first salary review to the petitioner on 22.02.2014 and his second salary review on 22.02.2021, but so far his second salary review has not been done by the respondent Corporation. Hence, the petitioner made a representation on 20.03.2023 seeking to fix the petitioner's first and second salary reviews as per law. However, the same was not considered and hence this writ petition came to be filed.

5.For all the colleague drivers of the petitioner, who joined duty along with the petitioner, the first review of salary was done on 22.08.2013 on the completion of the first six years and thereafter the second review of salary was also done on the completion of 7 years from the date of first salary review, that is on 22.08.2020. The learned counsel for the petitioner further submitted that the respondents attitude in imposing postponement of one year increment with cumulative effect on 10.02.2012 and thereafter postponement of 4 years increment with cumulative effect on 31.03.2018 on the petitioner is vindictive and the respondent Corporation ought to have reviewed the petitioner's salary twice at par with his colleagues, who joined service along with him on 22.08.2007. Refusing to consider him for review of salary along with imposition of punishment of postponement of annual increment with cumulative effect twice, would amount to double jeopardy and such an exercise is *per se* illegal. Hence, the respondent Corporation should be directed to provide the first and second salary review of the petitioner's employment in the respondents office as per law and he insisted to allow the writ petition.

6.The learned standing counsel for the respondents has filed a counter and submitted that there is no flaw in the first salary review of the petitioner done on 01.05.2022. The delay in fixing the first salary benefit review was not caused by the Management, but it was due to the petitioner's misconduct, for which the Management cannot be held responsible in any way. The rules and regulations of the Corporation are followed strictly with an intention to preserve discipline and duty bound among the TNSTC workmen. On that basis, the petitioner's second salary review date is fixed provisionally on 01.05.2029. If the petitioner is able to carry forward his further service without any misconduct or unauthorized absence, till 01.05.2029, he will get the benefit of a second salary review on the provisionally fixed date. Thus, the writ petition is not maintainable and he pressed for dismissal of the writ petition.

7.The petitioner's contention that the imposition of punishment of postponement of increment with cumulative effect and refusal to review salary on the completion of 6 years at the first instance and thereafter on the completion of 7 years for the second instance would amount to double jeopardy, has to be analysed in the facts and circumstances of this case.

8.To elucidate such contention, it is necessary to understand the effect of postponement of increment with cumulative effect. In this analysis, it is evident that the loss of increments can be either with cumulative or non-cumulative effect. The word cumulative means permanent postponement of the increment. An increment shall ordinarily be drawn as a matter of course of employment by an employee, unless it is withheld and an increment may be withheld from a Government employee by a competent authority, only if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments. When the competent authority exercises its powers under this rule, it is then that it makes an order of stoppage of increments with cumulative effect.

9.When a punishment of postponement/stoppage of increment of an employee with cumulative effect for a particular period is inflicted on an employee, then until the completion of the said period, the scope of reviewing one's salary is completely ruled out. Hence, the contention of the petitioner's counsel that, the imposition of a punishment of postponement of increment with cumulative effect and refusal to review of salary would amount to double jeopardy is not sustainable. There is no question of imposition of postponement of increment with cumulative effect and reviewing the salary of an employee simultaneously.

10.In the case of ***Punjab State and others Vs. Ram Lubaya*** reported in ***1983 (2) SLR 410***, the postponement of increment of an employee with or without cumulative effect has been demonstrated and the relevant portion of which is extracted as follows:

> *"7.Before proceeding further, it will have to be understood as to what is the effect of withholding of increments simplicitor, ie., without cumulative effect, and with cumulative effect. For example, if an employee is getting Rs.100 at the time of imposition of penalty of withholding of increments, and the penalty is without cumulative effect for a period of two years and the annual increments were to be of Rs.5, then in that case for two years, he will continue to get Rs.100 per month but after the expiry of two years, he will get at the time of next increment, Rs.115 including the increments for the past two years during which period they remained withheld.*
>
> *8.In case of withholding of increments for 'two years with cumulative effect, the employee will get Rs.100 for two years and at the third increment, he would Rs.105 and not Rs.115. While in the first case there will be a loss of increments for two years only and no further loss thereafter till retirement, but in the second eventuality due to loss of two increments, there will be loss of pay for whole of the remaining tenure of the employee which will*

affect his pension on his retirement. Therefore, two penalties would be clearly distinct having different consequences."

11.The Hon'ble Apex Court in the case of ***Kulwant Singh Gill Vs. State of Punjab*** reported in ***1991 Supp (1)SCC 504***, has explained the implication of cumulative effect and the relevant portion of which is extracted as follows:

> 3.....*Withholding of increments of pay simpliciter without any hedge over it certainly comes within the meaning of Rule 5(iv) of the Rules. But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time- scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order, by necessary implication, is that the appellant employee is reduced in his time-scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time-scale of pay as a measure of penalty.*

12.The Hon'ble Apex Court in the case of ***Punjab State Electricity Board Vs. Raj Kumar Goel*** reported in ***(2014) 15 SCC 748***, has critically analysed the implications of postponement of yearly increment with cumulative effect and the relevant portion of which is extracted as follows:

> "11. At the very outset, we may clearly state there is no discord or dispute over the exposition of facts. The controversy has arisen with regard to implementation of the order of punishment imposed by the authority on the delinquent employee. The courts below have opined that though it is mentioned in the order of punishment that there is stoppage of five increments without cumulative effect which is a minor punishment yet the manner of implementation converts it to a major punishment. There can be no cavil over the proposition that when a punishment of stoppage of an increment with cumulative effect is imposed, it is a major punishment. In this regard, we may refer with profit to the decision in Kulwant Singh Gill v. State of Punjab MANU/SC/0658/1991 : 1991 Supp(1) SCC 504 wherein it has been held that withholding of increments of pay simpliciter without any hedge over it certainly would be a minor punishment but

withholding of increments with cumulative effect, the consequences being quite hazardous to the employee, it would come in the compartment of major punishment. Proceeding further the two Judge Bench stated thus:

> But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order, by necessary implication, is that the Appellant employee is reduced in his time scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time scale of pay as a measure of penalty. The words are the skin to the language which if peeled off its true colour or its resultant effects would become apparent.”

13.Precisely, the above discussions would make it clear that the effect of postponement of increment with cumulative effect is that the employee is reduced in his time scale of pay for the period in question and it is in perpetuity during the rest of the tenure of his service and the increments he would have earned for those years would not be counted in his time scale of pay as a measure of penalty. Hence, I conclude by observing that when the punishment of postponement of increment of an employee with cumulative effect is in force, the question of salary review of the said employee will not arise during the said period. As such, there is no illegality or irregularity, on the part of the respondent Corporation, in fixing the date of the first salary review and second salary review of the petitioner in the facts and circumstances of this case.

14.Accordingly the Writ Petition is dismissed. There shall be no order as to costs.

04.09.2023

NCC : Yes
Index : Yes
Internet : Yes
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To

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Kumbakonam Division,
Kumbakonam.

2.The General Manager,
Tamil Nadu State Transport Corporation Limited,
Karaikudi Region,
Karaikudi,
Sivagangai District.

L.VICTORIA GOWRI, J.

ps

Pre-Delivery Order made in W.P.(MD)No.16515 of 2023

04.09.2023