BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD).No.16917 of 2023
and
W.M.P(MD)No.14150 of 2023

N.Manoharan ...Petitioner

Vs.

1.The State Express Transport Corporation
(Tamil Nadu) Limited,
Represented by its Managing Director,
Pallavan Salai,
Chennai-600 002.

2.The General Manager (Operation and Administration),
The State Express Transport Corporation
(Tamil Nadu) Limited,
Pallavan Salai,
Chennai-600 002. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order, dated 27.03.2019 passed by the second respondent in Letter No.019066/L2/SETC/2017 in rejecting the representation of the petitioner for refund of recovery made from his terminal benefits to the tune of Rs.23,400/- towards monetary value equivalent to "non-implemented punishments of increment cuts and quash the same as unjust, illegal, arbitrary and unconstitutional and consequently direct the respondents to refund the recovered amount of Rs.23,400/- to the petitioner with interest at 6% per annum payable from 28.02.2018 to till the date on which the above amount is settled to him.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.R.Senthil Kumar
Standing Counsel

ORDER

This Writ Petition has been filed for a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order, dated 27.03.2019 passed by the second respondent in Letter No. 019066/L2/SETC/2017 in rejecting the representation of the petitioner for refund of recovery made from his terminal benefits to the tune of Rs.23,400/- towards monetary value equivalent to "non-implemented punishments of increment cuts and quash the same as unjust, illegal, arbitrary and unconstitutional and consequently direct the respondents to refund the recovered amount of Rs.23,400/- to the petitioner with interest at 6% per annum payable from 28.02.2018 to till the date on which the above amount is settled to him.

2. Heard the learned Counsel for the petitioner and the learned Standing Counsel for the respondents and carefully perused the materials available on record.

3. The petitioner joined the respondent Corporation as Conductor with effect from 02.05.1987. He retired from his service in the level of Selection Grade Senior Conductor on attaining his age of superannuation on 28.02.2018. On the verge of his retirement, he was imposed with punishment of stoppage of his annual increment for six months with cumulative effect vide order, dated 05.02.2018 passed by the second respondent. Since the said order could not be enforced on account of his retirement, the respondent Corporation computed monetary value equivalent to un-implemented punishment of stoppage of increment for six months with cumulative effect and recovered a sum of Rs.23,400/- from his terminal benefits.

4. Aggrieved by the said order of recovery, the petitioner submitted a representation to the respondents on 23.06.2018 to refund the recovered amount. Since the same was not considered, he filed a writ petition in

W.P(MD)No.15033 of 2018 before this Court and the same was disposed on 12.07.2018, directing the respondents to consider his representation, dated 23.06.2018. However, the said order was not complied with. Hence, the petitioner filed a contempt petition in Cont.P(MD)No.529 of 2019. When the contempt petition came up for hearing on 17.12.2021, it was informed by the respondents that the petitioner's representation has been disposed of vide order, dated 27.03.2019, rejecting the petitioner's representation, dated 23.06.2018. However, recording the said submission made by the respondents, the said contempt petition was closed. Challenging the said rejection order, dated 27.03.2019, this writ petition came to be filed.

5. The learned Standing Counsel for the respondents on the basis of written instructions submitted that the petitioner did not appear for the departmental enquiry. In view of the direction passed by this Court in W.P(MD)No.15033 of 2018, the respondent Corporation had sent several communications to the petitioner, requiring him to appear for enquiry before the respondent Corporation. For which, the petitioner did not co-operate and hence, favorable orders were not passed considering his representation. However, the matter in issue in the case in hand is no more

res integra and the petitioner has made a representation, seeking re-fund of the recovery made from his terminal benefits to a tune of Rs.23,400/- towards monetary value equivalent to 'non-implemented punishment of increment cut' and the issue has already been considered by the Hon'ble Division Bench of this Court in W.A(MD)No.1270 of 2020, dated 15.06.2021, wherein the challenge made by the Transport Corporation as against the similar order with respect to the petitioner therein was considered and the writ appeal was also dismissed. The relevant portion of which is extracted as follows:

> *"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:

> *"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."*

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 settled."

6. Adopting the same, this Court is fully in consonance with the order passed by the Hon'ble Division Bench of this Court *supra*, since there is no provision in the Certified Standing Orders to pass orders of recovery after retirement proposing to recover the un-implemented punishment of increment cut. The said exercise is wholly without

jurisdiction and thereby this court hereby quash the impugned order, dated 27.03.2019 and thereafter, direct the respondents to refund the recovered amount of Rs.23,400/- with interest at 6% per annum payable from 28.02.2018 to till the date of disbursement, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

7. This writ petition stands allowed, accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

05.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To
1.The Managing Director,
The State Express Transport Corporation
(Tamil Nadu) Limited,
Pallavan Salai,
Chennai-600 002.

2.The General Manager (Operation and Administration),
The State Express Transport Corporation
(Tamil Nadu) Limited,
Pallavan Salai,
Chennai-600 002.

L.VICTORIA GOWRI, J.,

BTR

W.P(MD).No.16917 of 2023

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