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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.1892 of 2022
and
WMP.Nos.2042 & 2043 of 2022

C.Ganesan ... Petitioner

Vs.

1.The Tamilnadu State Transport Corporation(Salem) Ltd.,
represented by its Managing Director,
Salem 636 007

2.The Assistant Manager,
(Administration & Joint Management),
Tamilnadu State Transport Corporation(Salem) Ltd.,
Salem 636 007 ... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order in Memo No.E8/1726/TNSTC (Salem)/2019, dated 18.11.2019 of the second respondent, to quash the same and to issue consequential directions to disburse the gratuity payable to the

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petitioner forthwith consequent on his retirement on 30.04.2019 A.N. with interest for the delayed payment.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.K.Raja,
Standing Counsel

ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 18.11.2019, thereby deducted a sum of Rs.2,72,700/- towards unimplemented punishment.

2. The petitioner was working as Conductor Grade-I in Sankagiri Branch of Tamilnadu State Transport Corporation and retired from service on 30.04.2019 on attaining the age of superannuation. After his retirement, the second respondent had issued memo dated 18.11.2019 directing the petitioner to remit the total sum of Rs.2,72,700/- towards the penalties of stoppage of increment in certain disciplinary proceedings initiated against the petitioner while he was in service. It was not implemented while he was in service and it was recovered from the gratuity payable to the petitioner.

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3. On perusal of the counter filed by the first respondent revealed that the petitioner was retired from service as on 30.04.2019. He was also informed that 10 years 6 months punishment with cumulative effect increment postponed and 5 years 3 months punishment of increment postponed without cumulative effect were pending without implementation. Therefore, he was directed to remit a sum of Rs.2,72,700/- towards unimplemented punishment to the Corporation by the letter dated 17.05.2019. On receipt of the same, the petitioner accepted and gave concurrence to deduct a sum of Rs.2,72,700/- from his terminal benefits and requested to settle the balance terminal benefits. The counter also stated that it was made as per Section 12(3) of the Industrial Disputes Act on arrival of the 13th wage settlement and based on the Common Service Rule of the Corporation and based on the concurrence given by the petitioner.

4. The Hon'ble Division Bench of Madurai Bench of this Court in WA.(MD)No.1270 of 2020 in the case of ***The State Express Transport Corporation (Tamilnadu) Limited rep. by its Managing***

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Director and others Vs. G.Senthil and another dated 15.06.2021, held 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*

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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

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Orders, enabling the Management to pass such orders. Therefore, on that ground, the impugned orders are required to be set aside.“

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

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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.“

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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.

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5. Thus it is clear 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. Further, the contention as to Section 12(3) of Industrial Disputes Act settlement provides for passing of such order in an organisation is also rejected by the Hon'ble Division Bench since it 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 Standing Orders.

6. In view of the above, the impugned order dated 18.11.2019 in memo No.E8/1726/TNSTC (Salem)/2019 issued by the second respondent is quashed. The second respondent is directed to disburse the deducted gratuity amount to the tune of Rs.2,72,700/- to the petitioner forthwith. However, the petitioner is not entitled for any interest for the said amount. Accordingly, this writ petition stands allowed.

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Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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To
1.Managing Director,
The Tamilnadu State Transport Corporation(Salem) Ltd.,
Salem 636 007
2.The Assistant Manager,
(Administration & Joint Management),
Tamilnadu State Transport Corporation(Salem) Ltd.,
Salem 636 007

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G.K.ILANTHIRAIYAN, J.

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