IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2024

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.5409 of 2020

M.Balakrishnan ... Petitioner

Vs

1. The Managing Director,
   Tamil Nadu State Transport Corporation (Salem) Ltd.,
   12, Ramakrishna Salai,
   Salem – 636 007.

2. The Administrator,
   Tamil Nadu State Transport Corporation
   Employees Pension Trust,
   Administrative Office,
   Thiruvalluvar House,
   Pallavan Salai,
   Chennai – 600 002. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the action of the respondents in making recovery of Rs.4,17,450/- being the retirement benefits of the petitioner is illegal and unjust in view of the order made in W.A.Nos.886 and 887 of 2017 dated 12.07.2017 and consequently directing the respondents to refund the amount retirement benefits with interest at the rate of 6% per annum.

For Petitioner : Mr. G.Pugazhenthi

For Respondents : Mr. M.Ashwin,
Standing Counsel (for R1)

O R D E R

This Writ Petition has been filed, challenging the action of the respondents in making a recovery of Rs. 4,17,450/-, being the retirement benefits of the petitioner.

2. The petitioner entered into service as a Conductor on 28.11.1984 in the respondent Corporation. He was later re-designated as Senior Conductor. Upon attaining superannuation, he was permitted to retire from service on 30.09.2014. During his service, he faced several punishments, including stoppage of increment with and without cumulative effects, ranging from 3 months to 5 years, due to unauthorized absence from duty. A recovery order dated 25.07.2014 was issued to him, requiring him to pay Rs. 3,53,510/- as punishment for postponing increments. Despite this,

he was allowed to retire and is now entitled to all retirement benefits.

3. While that being so, the petitioner was served with a letter dated 08.07.2015, stating that he ought to pay a sum of Rs. 4,17,450/- towards non-implementation of the punishment of increment cuts. Furthermore, the letter directed the petitioner to pay an additional sum of Rs. 10,005/-, representing the balance amount of non-implementation of increment cuts, after adjusting the amount deducted from his retirement benefits.

4. Insofar as the gratuity is concerned, the petitioner submitted an application before the Controlling Authority for payment of gratuity under the Payment of Gratuity Act. The Assistant Commissioner of Labour passed an order dated 16.04.2018, directing the third respondent to pay a sum of Rs. 2,74,967/- towards the payment of gratuity, along with interest at the rate of 10% per annum, till the date of realization. Subsequently, the petitioner received the said amount.

5. Insofar as the recovery of Rs. 4,17,450/- is concerned, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Division Bench of this Court in ***W.A. (MD) No. 465 of 2017 etc., batch dated 30.06.2017***. In this judgment, the Hon'ble Division Bench of this Court held that an order of recovery passed by following provisions of the Common Service Rules, specifically Rule 4(1) (e). Since the workmen had suffered punishment of withholding of increment, which could not be given effect to, as they did not have the requisite remaining years of service. However, this is not sustainable, as the workmen are governed by the rules framed in the Certified Standing Orders. In violation of the same, the Management cannot follow Rule 4(1) (e) of the Common Service Rules by invoking Clause 25 (1) (iv) (b) of the Certified Standing Orders. Therefore, the respondents have no jurisdiction to recover three times the monetary value equivalent to the amount of increment, as there is no such provision in the Certified Standing Orders enabling the Management to pass such orders.

6. The first respondent has filed a counter-affidavit, and the submissions made by the learned Standing Counsel for the first respondent,

it reveals that the petitioner, while in service as a Conductor, was imposed with punishments 68 times for various charges. The maximum punishment imposed on the petitioner was stoppage of increment, with or without cumulative effect, for periods ranging from 3 months to 5 years. At the time of retirement, 39 years and 6 months of increment cut with cumulative effect, and 9 years and 7 months of increment without cumulative effect, were pending unimplemented in the petitioner's punishment record. As per the Common Service Rules, a sum of Rs. 4,17,450/- was required to be recovered from the petitioner, owing to the said unimplemented punishments. Additionally, a sum of Rs. 10,005/- was yet to be remitted by the petitioner, as per the Common Service Rules.

7. Admittedly, the petitioner was imposed with several punishments of stoppage of increments, with and without cumulative effects, for periods ranging from 3 months to 5 years, while he was in service. In order to implement the said punishments, the respondents have now made a recovery of Rs. 4,17,450/- towards the non-implementation of the punishment of stoppage of increments.

8. It is relevant to extract Rule 4(1)(e) of the Discipline and Appeal Rules of the Common Service Rules, which reads as follows:-

> *"Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be with hold, where such an order cannot be given effect to.*
>
> <u>*Explanation:*</u> *In case of stoppage of increment with cumulative effect, the monetary value equivalent to three times the amount of increments ordered to be with hold may be recovered."*

9. Further, in terms of Clause 25 of the Certified Standing Orders, the punishment has to be awarded to the workmen found guilty of misconduct. Only in cases where such punishment awarded could not be given effect to, would the question of recovering the monetary value equivalent to the amount of increment ordered to be withheld arise. Moreover, such recovery can be done only when separate orders for recovery are passed.

10. It is relevant to extract Clause 25 of the Certified Rules, which reads as follows:-

"25.PUNISHMENT OF MISCONDUCT:

1. The following shall be the prescribed punishment that may be awarded to workman, guilty of misconduct.

i. Censure

ii. Fine: Subject to the provisions of Payment of Wages Act.

iii. Stoppage of increments: Stoppage of increments with or without cumulative effect.

a) Recovery from wages whole or part of any pecuniary loss, caused to the Corporation by the negligence or breach of orders of the workman.

b) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increment ordered to be with hold where such an order cannot be given effect to.

c) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of reduction to a lower stage in a time scale ordered where such an ordered cannot be given effect to.

v. Suspension not exceeding 30 days.

vi. Demotion to lower post or lower grades. No workmen shall be demoted to any post or grades lower than to which he was initially recruited under the Corporation.

vii. Compulsory retirement.

viii. Removal from service or discharge.

ix. Dismissal from service.

x. Any of the above in case of accidents where driver is found to be guilty."

11. Admittedly, the Common Service Rules will not be applicable to the petitioner, as workmen are covered by the Certified Standing Orders. Therefore, the explanation contained in Rule 4(1)(e) of the Common Service Rules has no application to the petitioner. Moreover, the respondents committed a serious error in invoking Clause 25(1)(iv)(b) of the Certified Standing Orders. That apart, the order of recovery of the monetary value, three times equivalent to the amount of increment, cannot be sustained, as there is no enabling provision in the Certified Standing Orders.

12. It is relevant to extract the relevant portion of the judgment of the Hon'ble Division Bench of this Court in ***W.A. (MD) No. 465 of 2017 etc., batch dated 30.06.2017***, 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.

"38. Thus, for all the above reasons, we are of the firm view that the orders of recovery passed against the workmen are liable to be set aside. Accordingly, the orders of recovery are set aside and the issue that has been raised in regard to the first set of Appeals filed by the Management is answered in favour of the workmen. Insofar as the issue pertaining to the second set of Appeals filed by the workmen is concerned, the order of recovery is set aside and the punishment is confirmed. The second issue is answered partly in favour of the workmen. The next aspect is as to whether the workmen are entitled to interest on the retiral benefits, which is the subject matter in the third set of Appeals. In terms of the relevant statute, when retirement benefits are delayed, they are required to be paid along with interest. Under the Tamil Nadu Pension Rules, an amendment has been brought by insertion of Rule 1 (A) in Rule 45 (A), which provides for interest on the Death cum Retirement Gratuity (DCRG) payable on expiry of three months even in respect of a Government servant, against whom, disciplinary proceeding

was initiated and he was thereafter, exonerated of the charge. If such is the position, insofar as the Government servants are concerned, we would be justified in exercising our discretion to direct the Management to pay the retiral benefits with reasonable interest since for a considerable length of time, the retirement benefits have not been paid, and the entire benefits have been fully wiped of under the garb of recovering three times the monetary value of the increment, which we have held in this order as wholly without jurisdiction and illegal. Therefore, we are inclined to direct the Management to pay reasonable interest on the said retiral benefits payable to the workmen, and this issue is answered in favour of the workmen."

13. The above judgment is squarely applicable to the case on hand. In view of the above, the action of the respondents in making a recovery of Rs. 4,17,450/- from the retirement benefits of the petitioner cannot be sustained and is hereby declared illegal. Consequently, the petitioner is entitled to his retirement benefits, amounting to Rs. 2,76,907/-, which was deducted while paying the gratuity amount. The petitioner is also entitled to interest at the rate of 6% per annum on the said amount till the

realization of the entire amount.

14. In the result, this Writ Petition is allowed. No costs.

20.09.2024

Index:Yes/No
Neutral Citation/Yes/No
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G.K.ILANTHIRAIYAN, J.

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