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W.P.No.32246 of 2013



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM

THE HONOURABLE MR.JUSTICE **D. BHARATHA CHAKRAVARTHY**

W.P.No.32246 of 2013

S.Suriyanarayanamoorthy

... Petitioner

-Vs-

1. Tamil Nadu State Transport
Corporation (Salem) Ltd.,
rep.by its Managing Director
12, Ramakrishna Road,
Salem 7

2. The General Manager
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Dharmapuri Region,
Bharathipuram,
Dharmapuri.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration declaring that the action of the respondents in cancelling the 4th and 5th review given to the petitioner w.e.f. 01.08.2003 and 01.08.2006 with monetary benefits w.e.f.01.09.2010 and also reducing his position and scale of pay from General Foreman to Foreman, reducing and refixing his pay and making recovery of the amounts based on such reduction and refixation of pay as illegal and consequently direct the respondents to give him 4th and 5th review benefits w.e.f. 01.08.2003 and 01.08.2006 with monetary benefits w.e.f. 01.09.2010 and also to restore him to



the post of General Foreman from 01.06.2011 with arrears and all other consequential benefits and also to pay him the revised terminal benefits based on the pay to be arrived at as on the date of his superannuation after granting him the above benefits, together with interest, award costs.

For Petitioner : Ms.H.Nandhini
for Mr.R.Krishnaswamy

For Respondents : Mr.R.Babu

ORDER

This writ petition has been filed for declaration that the action of the respondents in cancelling the 4th & 5th review granted to the petitioner with effect from 01.08.2003 and 01.08.2006 with monetary benefits with effect from 01.09.2010 thereby, reducing the pay of the petitioner from the scale applicable to the General Foreman to Foreman and re-fixing his pay and recovering the amounts already paid as illegal and also to restore the position as that of General Foreman with effect from 01.06.2011 with all arrears and consequential benefits.

2. The case of the writ petitioner is that he joined the 1st respondent Corporation as a Junior Tradesman with effect from 01.05.1973. Since there were no promotional avenues time bound promotions on completion of 6, 14 & 24 years respectively were granted. After that, the petitioner was absorbed into



the present Corporation. Since the petitioner came within the zone of consideration for further promotion as Foreman, he was also promoted to the said post with effect from 15.02.1993. Even in the promoted post, he was entitled for time-bound promotion on completion of 6 years and 14 years and the rights are governed by 12 (3) settlements which were entered into periodically. Accordingly, the petitioner's pay was finally revised and pay band was fixed at Rs.13,870/- in the Grade Pay of Rs.4,600/- with effect from June 2011. As a matter of fact, the first increment was also again given in the month of November 2011 and the petitioner was drawing pay of Rs.14,430 as of the month of March 2012. Suddenly in the month of April 2012, the petitioner's pay was reduced to Rs.13,020/- and the grade pay was reduced to Rs.4,400/- The same was made known to the petitioner only on perusal of the salary bill. No show cause notice what so ever was issued to the petitioner, neither any order of recovery or re-fixation of pay was passed and communicated to the petitioner. The petitioner also superannuated from service with effect from 30.06.2012. Immediately upon superannuation the petitioner made a representation to the respondents but there was no positive response and hence this writ petition.

3. Even though no counter affidavit has been filed, the learned counsel for the respondents has written instructions dated 11.02.2014. As per the same,



the writ petitioner S.Suriya Narayana Moorthy was appointed with effect from 01.05.1973. He was entitled to three reviews upon 6, 8 and 10 years of service as per the longevity pay scheme and the same was granted on 01.05.1980 and 01.05.1988. Before the 3rd review, he was promoted as Foreman with effect from 15.02.1993 which is a supervisory post. Thereafter further reviews ought not to have been granted to him as the settlement under 12 (3) does not apply to the employees who are in the supervisory scale. Accordingly, the error was noticed and even the person who wrongly granted the benefits was punished for the wrongful granting of benefits. Therefore, the pay of the petitioner was re-fixed and the mistake was corrected and the erroneous payments were recovered from the dues belonging to the petitioner.

4. The learned counsel for the petitioner further submitted that in the absence of show cause notice or an order such proceedings in the form of correction without passing an order cannot be justified. The learned counsel also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***State of Punjab and Ors., Vs. Rafiq Masih*** contended that any recovery at that stage was not possible.

5. I have considered the rival submissions made on either side and perused the materials on record.



6. Even if the learned counsel for the respondent contends that the reviews were wrongly granted to the writ petitioner by way of a mistake and that they are entitled to correct the mistake, firstly, such an exercise visits the petitioner with civil consequences, that is, a reduction in pay. It cannot be passed without issue of show cause notice and hearing the petitioner. Secondly, without passing an express order in writing the pay ought not to be reduced. Therefore the action of the respondents in suddenly reducing the pay from April 2012 cannot be countenanced.

7. Normally, this Court would have remitted the matter back to the respondents for passing orders after issuance of fresh show cause notice and hearing the petitioner. However, in this case, the petitioner retired upon superannuation immediately after the action in April 2012, that is, with effect from 30.06.2012. Thereafter, twelve further years have gone by. The petitioner is now aged 70 years. At this belated point in time, it would be unjust to remit the matter back to the respondents to pass fresh orders.

8. Therefore, the writ petition is disposed of with the following terms:-

(i) The action of the respondents in reducing the pay of the petitioner from



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Rs.14,330 + grade pay of 4,600/- to Rs.13,020 + grade pay of Rs.4,400 with effect from April 2012 is declared as illegal;

(ii) The difference in amount if any recovered from the petitioner and the difference in pay for the month of April, May & June 2012 is ordered to be paid to the petitioner;

(iii) All other benefits if any due to the petitioner with reference to his retrial benefits and pension on account of the original scale of pay shall also be paid to the petitioner;

(iv) The arrears shall be calculated and paid within a period of three months from the date of receipt of a copy of this order, however without any interest.

(v) No costs.

27.02.2024

Index : Yes/No
Speaking order/Non-speaking order
dpq



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D. BHARATHA CHAKRAVARTHY, J.

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