IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.01.2024

Pronounced on : 24.01.2024

CORAM:

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

W.P.No.14190 of 2022 and
WMP.No.13430 of 2022

R.Kandasamy ... Petitioner

Vs.

1.Tamil Nadu State Transport Corporation
(Salem) Limited,
Rep. By its Managing Director,
12, Ramakrishna Road,
Salem 636 007

2.The Tamilnadu State Transport Corporation
(Salem) Limited,
Rep. By its General Manager,
12, Ramakrishna Road,
Salem 636 007

3.The State Transport Corporation
Employees' Pension Fund Trust,
Rep by its Administrator,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai 600 002

4.The Assistant Manager(Personnel)
Tamil Nadu State Transport Corporation
(Salem) Ltd.,
No.12, Ramakrishna Salai,
Salem – 7 ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus by quashing the order dated 29.05.2019 in memo No.E8/2063/TNSTC(Salem)/2019 issued by the fourth respondent, based on which the respondents have adjusted and recovered a sum of Rs.6,75,600/- from petitioner's Provident Fund, gratuity, the amount payable under the Social Security Scheme and from the Commuted value of Pension, towards the monetary value of unimplemented punishments and for a direction to the respondents to pay and refund the petitioner the above amount, with interest and also to pay the petitioner interest for the belated payment of his PF and commuted value of pension, award costs.

For Petitioner : Mr.V.Ajoy Khose

For Respondents
For R1, 2 & 4 : Mr.K.Raja

For R3 : Mr.C.S.K.Sathish

ORDER

This writ petition has been filed challenging the order dated 29.05.2019 passed by the fourth respondent, thereby adjusted and recovered a sum of Rs.6,75,600/- from the petitioner's provident fund, gratuity, the amount payment under Social Security Scheme and from commuted value of pension, towards the monetary value of unimplemented punishment.

2. The petitiner had joined in the services of the respondents as Driver on 16.06.1986. He was made permanent from the date of completion of his 240 days as Driver from 16.06.1986. Due to his attainment of age of superannuation, he was retired from service as Senior Driver on 30.04.2019. However, he was not paid any terminal benefits to the tune of Rs.6,75,600/- towards the monetary value of the unimplemented punishment. He was paid a sum of Rs.12,235/- towards provident fund and a sum of Rs.2,51,532/- towards commuted value of pension. Further, the petitioner was informed that a sum of Rs.2,00,000/- was deducted and adjusted from provident fund amount. Therefore, the petitioner raised objection and submitted detailed representation on 23.04.2021. However, there was no reply.

3. The learned counsel for the petitioner would submit that the action of the respondents in not paying interest for the belated payment of the petitioner's terminal benefits and deducting the amount from his terminal benefits is arbitrary and violative of Articles 14, 16, 21 and 300(A) of the Constitution of India. The petitioner was a workman

governed by the certified standing orders of the first respondent till his retirement. Therefore, all the punishments which were imposed on the petitioner would automatically lapse and come to an end once he attained the age of superannuation and retired from service. There is no provision in the certified standing orders for calculating the monetary value of the punishments imposed to the petitioner during his service and which could not be implemented before his retirement and to recover the same from the petitioner.

4. Heard, the learned counsel appearing on either side.

5. 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 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 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.“

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 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.“

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. 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 Section12(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.

7. In view of the above, the order dated 29.05.2019 in memo No.E8/2063/TNSTC (Salem)/2019 issued by the fourth respondent is quashed. The second respondent is directed to disburse the deducted amount to the tune of Rs.6,75,600/- to the petitioner forthwith. However, the petitioner is not entitled for any interest for the said amount. Accordingly, this writ petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

24.01.2024

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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To
1.Managing Director,
Tamil Nadu State Transport Corporation
(Salem) Limited,
12, Ramakrishna Road,
Salem 636 007
2.General Manager,
The Tamilnadu State Transport Corporation
(Salem) Limited,
12, Ramakrishna Road,
Salem 636 007
3.Administrator,
The State Transport Corporation
Employees' Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai 600 002
4.The Assistant Manager(Personnel)
Tamil Nadu State Transport Corporation
(Salem) Ltd.,
No.12, Ramakrishna Salai,
Salem – 7

G.K.ILANTHIRAIYAN, J.

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