IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

CORAM

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

W.P.No.14239 of 2020
and
W.M.P. No. 17712 of 2020

1. M.Perumal (deceased)
2. P.Shantha
3. Manimegalai
4. Udhayasuriyan
5. Iniyavan

(P2 to P5 are substituted as LRs of deceased P1,
as per order dated 03.10.2024 in W.M.P.No.29964 of 2023
in W.P.No.14239 of 20200 ... petitioners

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation (VPM) Ltd.,
3/137, Salamedu, Thiruvannamalai Region,
Valuthareddy Post,
Villupuram – 605 602.

2. The General Manager,
Tamil Nadu State Transport Corporation (VPM) Ltd.,
Thiruvannamalai Region,
Thiruvannamalai Bye-Pass Road, Vengikkal,
Thiruvannamalai – 600 604.

3. The Deputy Manager (Accounts),
Tamil Nadu State Transport Corporation (VPM) Ltd.,
Thiruvannamalai Region,
Thiruvannamalai Bye-Pass Road, Vengikkal,
Thiruvannamalai – 600 604.

4. The Administrator,
Tamil Nadu State Transport Corporation Pension Trust Fund,
Thiruvalluvar House, Pallavan Salai,
Chennai – 600 002. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in connection with the order vide Letter. No. 5079/E.TH/Kanaku/TNSTC(vpm)/T.Malai/2017 dated 18.02.2020, regarding recovered amount of Rs.41,959/- towards monetary value of non-implementation of punishment and paid amount of excess Leave Salary and quash the same and consequently direct the respondents to forthwith to pay the recovered amount to the petitioner and to refix the petitioner's basic pay by giving effect to the settlement benefits as paid to the other similarly placed employees and to pay the pension and arrears of pension and the difference in payment of terminal benefits by following the order in W.A. (MD) No. 345 of 2017 dated 30.06.2017.

For petitioners : Mr. V.S.Jagadeesan

For Respondents : Mr. M.Aswin (for 1st Respondent to R3
No appearance (for R4)

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O R D E R

The instant Writ Petition has been filed against the order of the second respondent dated 18.02.2020, in connection with the petition forwarded by the original petitioner to the Tamil Nadu Chief Minister's Cell.

2. Since the original petitioner died on 07.02.2022 during the pendency of the Writ Petition, his wife, daughter and sons, viz., Shantha, Manimegalai, Udhayasuriyan and Iniyavan respectively, have been substituted as the petitioners in the Writ Petition by order dated 03.10.2024.

3. The contention of the learned counsel for the petitioners is that, the original petitioner was serving as a conductor with the respondents/Corporation, and that he was imposed with punishment dated 28.05.2010, for reduction of stage from senior conductor to conductor, for a period of three years, without any increment, thereby reducing his pay from Rs.9,000/- to Rs.5,305/-. The learned counsel further contended that the original petitioner was superannuated on 31.01.2012, and that the unimplemented punishment amount was subsequently paid by the original

petitioner on 22.12.2015. Thus, it is the contention of the learned counsel for the petitioners that, as on the date of his superannuation, his pay must be stepped up and the retirement benefits must be regulated in accordance with the stepped-up pay.

4. Such contention was strongly objected to by the learned counsel for the respondents 1 to 3, and they would contend that the original petitioner did not pay the unimplemented punishment amount, and that the reference made by the original petitioner regarding payment, was in respect of another punishment. Therefore, unless the original petitioner makes payment of this unimplemented punishment amount, they cannot seek relief of stepping up of the pay.

5. I have given my anxious consideration to the submissions made on either side.

6. The short point to be considered is, whether the retirement benefits of the original petitioner are to be regulated based on the stepped-up pay. In this regard, it is the contention of the petitioners that he has paid all

unimplemented punishment amounts on 22.12.2015, and from that date onwards, his pay has to be stepped up, and his pension has to be regulated in accordance with the stepped-up pay.

7. However, this factum was strongly objected to by the learned counsel for the respondents 1 to 3, and they would contend that no unimplemented punishment amount was paid, and that the receipt relied upon by the original petitioner was in respect of another punishment. However, this Court in W.P. (MD) No. 7558 of 2020, dated 28.07.2020, had categorically held that, if any punishment is imposed covering the the date beyond the period of superannuation, then the question of recovering the unimplemented punishment amount does not arise, as the same contravenes the Certified Standing Orders. Accordingly, the position now becomes crystal clear that on the date of superannuation, the unimplemented punishment amount must be taken as settled.

8. A similar issue has been dealt by the Division Bench of this Court in ***W.A. (MD) No. 1270 of 2020 dated 15.06.2021,*** wherein the Division Bench of this Court followed the case of ***Management of Tamil Nadu State***

Transport Corporation (Kumbakonam) Ltd., and others Vs. J.Arumugam and another in W.A. (MD) No. 465 of 2013 etc., batch, dated 30.06.2017.

The relevant paragraphs are paragraphs 7,8 and 9, which reads 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."

9. As such, it is obvious that, as long as the punishment is not for any recovery of monetary value, the question of recovery of unimplemented punishment amount does not arise in the case of this nature. To put it differently, the reduction of pay comes to an end, and in such view of the matter, his pay has to be restored to his old post, according to Rule 29(3) of

the Tamil Nadu Government Fundamental Rules (hereinafter referred to as 'the Rules' for short), as indicated in clause (b) of Ruling (1).

10. It is relevant to extract the Rule 29 (1) (b) of the Rules, which reads as follows:-

> *"(b) The question as to what should be the pay of a Government servant on the expiry of the period of reduction should be decided as follows:-*
>
> *(i) If the order of reduction lays down that the period of reduction shall not operate to postpone future increments, the Government servant should be allowed the pay which he would have drawn in the normal course but for the reduction. If, however, the pay drawn by him immediately before reduction was below the efficiency bar, he should not be allowed to cross the bar except in accordance with the provisions of Fundamental Rule 25.*
>
> *(ii) If the order specifies that the period of reduction was to operate to postpone future increment for any specified period, the pay of the Government servant shall be fixed in accordance with (i) above but for treating the period for which the increments were to be postponed as not counting for increment."*

11. Therefore, according to clause (b) of Ruling (1) of Rule 29, after the period of reduction comes to an end, the pay has to be regulated in his last drawn pay, which he would have drawn in the normal course. Here, in this case, since the original petitioner superannuated even prior to the date of completion of the punishment period, i.e., on 31.01.2012, his pay has to be regulated from 31.01.2012 in accordance with his last drawn pay, which he would have drawn in the normal course. However, the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India vs. Tarsem Singh,*** reported in ***(2008) 8 SCC 648***, makes it clear that the claim for such limitation of past pension arrears, three years was fixed.

12. For ready reference, we deem it appropriate to extract paragraph 8 of ***Tarsem Singh's case*** (cited supra) case, which read as follows:-

> *"8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of*

writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances."

13. It is in this background, the order of the second respondent regarding the rejection of stepping up of pay is contrary to the Fundamental Rules. Therefore, the original petitioner has made out a case for interference.

14. In the result, this Writ Petition is allowed, to re-fix the original petitioner's basic pay as indicated above and to regulate the pension from the date of superannuation dated 31.01.2012. However, the monetary benefits shall be restricted to last three years prior to the filing of the Writ Petition. Further, the order of recovery also quashed. Consequently, the connected Miscellaneous Petition is closed. No costs.

22.10.2024

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Index : Yes/No
Speaking order /Non Speaking Order
Neutral Citation : Yes/No

To

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C.KUMARAPPAN, J.

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