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W.P.No.23078 of 20--

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.23078 of 2019

V.Sankaran

... Petitioner

Vs.

1. Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Rep. by its Managing Director,
3/137. Salamedu,
Villupuram 605 602.
2. The General Manager,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Vellore Region,
Rangapuram,
Vellore 632 009.
3. The Assistant Manager (Pay and Administration),
Tamil Nadu State Transport Corporation
Villupuram Ltd.,
Vellore Region,
Rangapuram,
Vellore 632 009.



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4. Tamil Nadu State Transport Corporations
Employees' Pension Trust,
Rep. by its Administrator,
Thiruvalluvar Illam, Pallavan Salai,
Chennai 2.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus after calling for records pertaining to the order dated 04.03.2019 passed by the third respondent in Memo No.090/Sa-Ni27/TNSTC (V) Ltd – Vellore Region / 2018, quash the same insofar as directing the petitioner to remit a sum of Rupees Rs.6,84,000/- towards monetary value of unimplemented punishments of stoppage of increments with cumulative effect and a sum of Rs.1,08,000/- towards monetary value of unimplemented punishments of stoppage of increments without cumulative effect and the condition imposed by him that they could not settle his terminal benefits only if he pay the said amounts and consequently direct the respondents to settle him all the terminal benefits, such as monthly pension, Gratuity, Commutative Value of Pension, Earned Leave Salary, the amounts payable under the Family benefit fund scheme and social security scheme, IRT contributions, etc., without insisting him to pay the above amounts consequential benefits, together with interest at the rate of 12% per annum and within a specified time as may be fixed by this Court.

For Petitioner : Ms.G.K.Darshini

For Respondents : M/s.S.Pavithra, Standing Counsel



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ORDER

The petitioner has filed this writ petition seeking to quash the order bearing dated 04.03.2019 passed by the third respondent wherein the petitioner was directed to pay a sum of Rs.6,84,000/- and another sum of Rs.1,08,000/- towards monetary value of unimplemented punishments of stoppage of increments and consequently direct the respondents to settle him all the terminal benefits, such as monthly pension, Gratuity, Commutative Value of Pension, Earned Leave Salary, the amounts payable under the Family benefit fund scheme and social security scheme, IRT contributions, etc., without insisting him to pay the above amounts consequential benefits, together with interest at the rate of 12% per annum.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents and perused the materials available on record.

3. It is the case of the petitioner that the petitioner joined as conductor



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in the first respondent Corporation on 24.05.1990. Subsequently, he was made permanent and brought to time scale of pay w.e.f. 15.05.1991 and he retired from service on 31.05.2018. The third respondent issued an order dated 04.03.2019 informing the petitioner that his retirement benefits will be paid only after payment of a sum of Rs.8,00,961/- to the corporation by the petitioner. The reason stated by the respondents for issuing the said order is that due to non implementation of the punishment of increment of the petitioner. Aggrieved by the said order, the petitioner filed this writ petition.

4. The learned counsel for the petitioner submits that the impugned order is unreasonable, irrational and injustice. He contends that if the order of punishment of postponement of increment for a particular period could not be implemented due to intervention of retirement, then the order cannot be implemented after retirement by way of recovery, as it would amount to punishing the employee even after retirement.

5. The learned counsel for the petitioner further contends that the order impugned in this writ petition is violative of the principles of the



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natural justice, due to the reason that the petitioner was not given any opportunity of being heard before passing the impugned order. The learned counsel further contends that the action of the respondents in not paying commuted value of pension and monthly pension is also arbitrary and violative of Article 21 of the Constitution. Finally, the learned counsel sought for allowing the writ petition with a direction to pay retirement benefits to the petitioner forthwith.

6. On behalf of the respondents, a counter affidavit has been filed. The learned Standing Counsel appearing for the respondents by relying on the counter affidavit submits that during the course of the petitioner's employment, he had involved in many misconducts and the Corporation has imposed various punishment on the petitioner.

7. The learned counsel further submits that the respondent Management informed the petitioner vide letter dated 04.03.2019 that a sum of Rs.8,00,961/- being the monetary value of unimplemented punishment is to be paid by the petitioner, in accordance with law as per Wage Settlement agreement made on 04.01.2018 and retrospective effect from 01.09.2016



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between Trade Unions and the Corporation Managements under the Terms of Settlement. He was further informed that if the petitioner pays the said amount, he can receive the payment towards his terminal benefit. But he did not approach the respondents till date. As such, no interference requires in the impugned order and sought for dismissing the writ petition.

8. The learned counsel for the petitioner has placed reliance on the judgment of this Court in the case of ***R.Kandasamy Vs. Tamil Nadu State Corporation (Salem) Limited*** reported in CDJ 2024 MHC 996 and would submit that in identical circumstances, this court considered the case of the petitioner therein and quashed the impugned order and issued certain directions to the respondents to disburse the deducted amount.

9. This Court carefully perused the said judgment. A learned Single Judge of this Court by following the judgment of the Division Bench of Madurai Bench of Madras High Court in the case of ***State Transport Corporation rep. By Managing Director Vs. Senthil and another*** dated 15.06.2021 allowed the writ petition. The relevant paragraphs of the Division Bench Judgment are extracted hereunder:



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 organization. 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



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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*



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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



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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



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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.

10. On perusal of the above judgment, it is clear that the respondents are not empowered under Standing Orders who passed orders for recovery at the verge of the retirement proposing to recover the unimplemented orders of punishment of postponement of increment, is wholly without jurisdiction. The said decision is squarely applicable to the present case also. Accordingly, by following the judgment stated supra, this Court is inclined to issue the following orders:

“(i) The impugned order dated 04.03.2019 passed by the third respondent is hereby quashed; and

(ii) The respondents are directed to pay all terminal benefits for which the petitioner is legally entitled for, within a period of six weeks from the date of receipt of a copy of this order.”



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11. With the above observations and directions, the writ petition is allowed.

No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs



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