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WP.No.4364 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.02.2024

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.4364 of 2020

1.G.Gokila
2.Geethavinothini
3.Sudhamathi

...

Petitioners

/vs/

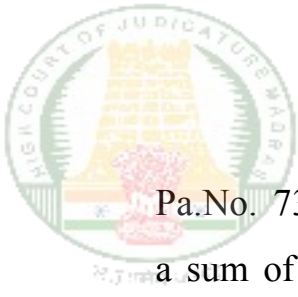
1. The Managing Director,
Tamil Nadu State Transport
Corporation (Coimbatore) Ltd,
Chennimalai Road,
Erode Region, Erode.

2.The General Manager,
TamilNadu State Transport
Corporation (Coimbatore) Ltd,
Chennimalai Road, Erode Region,
Erode.

3.The Branch Manager,
Erode Branch,
TamilNadu State Transport
Corporation (Coimbatore) Ltd, Erode. ...

Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari Certiorarified-Mandamus calling for the records pertaining to the impugned demand notice issued by the respondent vide



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Pa.No. 731/18/Na3/Nalam/TaNaPoKa/Co/EMa/2019 dated 7.2.2019 demanding a sum of Rs.1,91,180/- from the petitioners as non implemented punishment of increment cut to the petitioner's husband namely C.Gnanasekaran to quash the same and consequently direct the respondents to pay all the death benefits to the petitioners including the family pension along with other monetary benefits available to the petitioners for the death of 1st petitioner's husband along with the interest at the rate of 9% from 14.5.2015 till date of payment to the petitioners within stipulated time as may be fixed by this Court.

For Petitioner : Mr.T.C.Vasudevan

For Respondents : Mr.M.Murali Vinoth

ORDER

The petitioners are the legal heirs of the deceased Gananasekaran, who was employed as a conductor by the second respondent. They have filed this Writ Petition by challenging the order of the respondent, demanding a sum of Rs. 1,9,180/- towards the recovery amount of the punishment of stoppage of the increment of the deceased husband of the first petitioner.

2.Heard, Mr.T.C.Vasudevan, learned counsel for the petitioner and Mr.M.Murali Vinoth, learned counsel for the respondents and perused the materials available on record.



3.Mr.T.C.Vasudevan, learned counsel for the petitioner submitted that the respondents corporation withheld the death benefits of the deceased by stating that the petitioner has to pay the amount towards the punishment of stoppage of increment for the deceased C.Gnanasekaran and only then will the death benefits be settled for his legal heirs. It is further stated that the respondents aren't entitled to recover any amount towards the implementation of the stoppage of increment after the demise of the 1st petitioner's husband, C.Gannasekaran.

4. The learned counsel for the petitioner placed reliance on the case of *State of Punjab and others Vs. Rafiq Masih (White Washer) and others* [reported in (2015) 4 Supreme Court Cases 334], popularly called the 'White Washer case', wherein it is held that the monetary benefits wrongly extended to employees can only be interfered with in cases where such recovery would resolve in hardship of its nature, which would far outweigh the equitable balance of the employer's right to recover. It is made clear that recovery is impermissible in the following cases:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.



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(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

5. By relying on the above judgement, an order was passed on 29.11.2016 by this Court in WP.(MD) No.15273 of 2015 to the effect of disallowing the employer from recovering the implementation of the punishment of an increment cut subsequent to his retirement. Subsequent to the order of the Hon'ble Supreme Court made in '*White Washer case*', a Government Order has been issued in G.O.Ms.No.286 dated 28.08.2018.

6. In the instant case, the position is slightly different because the demand for the recovery of the implementation of the punishment of stoppage of increment is sought to be effected after the death of the employee. Had the punishment been implemented during the lifetime of the 1st petitioner's husband, the respondents could have been appreciated for his promptness and forethought.



Having omitted to implement the punishment, the 2nd respondent has issued the demand order consequent to the death of C.Gnanasekarn and in fact withheld his death benefits for the said reason.

7. The petitioner's husband was working as a conductor and hence he belongs to Class III and Class IV service(or Group 'C' and Group 'D' service) only. The recovery of the amount was due even during his lifetime, but the 2nd respondent has not taken any action to implement the punishment. Having allowed the recovery to become overdue till the death of C.Gannasekaran, the 2nd respondent has now chosen to issue the demand to his legal heirs.

8. Even in the case of the retired employees, the punishment has not been imposed and recovery was not made as against the stoppage of the increment. That can be done only if the non-recovery is not iniquitous and harsh enough to outweigh the employer's equitable right to recover the same.

9. The entitlement of death benefits of deceased C.Gannasekaran by his legal heirs without any reduction towards implementation of punishment of stoppage of increment would no doubt outweigh the employer's right to recover or, in other words, the employer, who was not smart enough to implement the



orders of punishment by making due recovery of stoppage of increment, cannot say that he has got an equitable right outweighing the agony of the legal heirs of the deceased and for that reason, he cannot withhold the death benefits of the deceased.

10. The petitioners are more plausible, and the death benefits of the deceased cannot be withheld for the reasons for the non-implementation of the punishment of stoppage of increment. Neither the 2nd respondent nor the petitioners can demand that they pay the amount towards the recovery of the implementation of the punishment of stoppage of increment. Since the respondents have withheld the death benefits which are due to be paid to the legal heirs of the deceased without any acceptable reasons, the respondents are liable to settle all those benefits without insisting the petitioners to deposit or allow the respondents to deduct any amount towards the recovery of the implementation of punishment of stoppage of increment cut.

11. It is pathetic that the death benefits have not been settled for the petitioner for 8 years and that would add more agony to their hardship. Hence, the 2nd respondent is liable to pay interest for the delay caused by him by disbursing the death benefits.



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12. In the result, this Writ Petition is **allowed**. The impugned demand notice issued by the respondent vide Pa.No. 731/18/Na3/Nalam/TaNaPoKa/Co/EMa/2019 dated 7.2.2019 is quashed. The respondents are directed to pay all the death benefits to the petitioners, including the family pension and other monetary benefits available to the petitioners for the death of 1st petitioner's husband, along with interest at a rate of 6% from 14.5.2015 till date of payment to the petitioners, as expeditiously as possible. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking/ Non-speaking
Neutral: Yes/No
jrs



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R.N.MANJULA, J.

jrs

- To
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Erode Region, Erode.
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