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W.P.No.13052 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2025

CORAM

THE HON'BLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

W.P.No.13052 of 2020

K.Radhakrishnan

... Petitioner

vs.

1.The Metropolitan Transport Corporation Ltd.,
Rep.by its Managing Director,
2, Pallavan Salai, Anna Salai,
Chennai - 2.

2. The Senior Deputy Manager (HR)
Metropolitan Transport Corporation Ltd.,
2, Pallavan Salai, Anna Salai,
Chennai - 2.

3. The Administrator,
Tamil Nadu State Transport
Corporations Employees' Pension,
Trust, Thiruvalluvar Illam,
Anna Salai, Chennai-2.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India
for issuance of a writ of Declaration, declaring that the action of the
respondents in recovering a sum of Rs.25,200/- from the petitioner



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towards the monetary value of the unimplemented punishment as illegal and without jurisdiction and consequently direct the respondents to refund him a sum of Rs.25,200/- and to settle all his terminal benefits such as Gratuity, PF, the amounts payable under Social Security Scheme and Family Benefit Fund Scheme, Earned Leave Salary, IRT contributions and commuted value of pension, together with interest at the rate of 12% per annum, within a specified time as may be fixed by this Court.

For Petitioner : M/s.G.K.Dharshini
for Mr.Krishnaswamy.R

For Respondents : Mr.C.Gowthamaraj
Standing Counsel

ORDER

The present writ petition has been filed for issuance of a writ of Declaration, declaring that the action of the respondents in recovering a sum of Rs.25,200/- from the petitioner towards the monetary value of the unimplemented punishment as illegal and without jurisdiction and consequently direct the respondents to refund him a sum of Rs.25,200/- and to settle all his terminal benefits such as Gratuity, PF, the amounts payable under Social Security Scheme and Family Benefit Fund Scheme,



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Earned Leave Salary, IRT contributions and commuted value of pension, together with interest at the rate of 12% per annum, within a specified time.

2. It is the case of the petitioner that he joined as conductor in the first respondent Corporation on 21.04.1988 and subsequently he was designated as Special Grade Conductor. While the petitioner was working in such post, a charge memo was issued against the petitioner on 30.04.2019 stating that the petitioner has already sold ticket to the value of Rs.11/- to one passenger and framed two charges pertaining to the year 2019. The petitioner has given his explanation dated 21.05.2019 and requested to exonerate him from the charges. However, the second respondent issued a final order dated 31.08.2019 and imposed the punishment against the petitioner to reduce in pay by 3 stages with cumulative effect for the period of one year. Challenging the same, the petitioner has preferred an appeal before the first respondent to set aside the order dated 31.08.2019. The first respondent has passed an order dated 13.11.2019 and modified the punishment into stoppage of increment for 6 months with cumulative effect. After completion of more than 31



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years of service, the petitioner retired on 31.01.2020 on attaining the age of superannuation. Since, the modified punishment could not be implemented, the respondents 1 and 2 forced the petitioner to pay a sum of Rs.25,200/- towards the monetary value of the unimplemented punishment of stoppage of increment for six months with cumulative effect. Thereafter, the petitioner sent a representation dated 11.08.2020 to the respondents and requested to refund the amount of Rs25,200/- which was recovered from him and also to settle all his terminal benefits. But the respondents have not settled the same. Therefore, the petitioner has come forward with the present writ petition.

3. The learned counsel appearing for the petitioner further submitted that the writ petition has been filed challenging the recovery for a sum of Rs.25,200/- from the petitioner towards monetary value of unimplemented punishment is illegal and without jurisdiction.

4. The learned counsel appearing for the petitioner further submitted that the issue has already been dealt with the following Judgment passed by the Hon'ble Division Bench of this Court :-



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i) ***The State Express Transport Corporation(Tamilnadu) Limited, Rep.by its Managing Director, Pallavan Salai, Chennai-02 and 3 Others vs. G.Senthil and another***, dated in W.A(MD)No.1270 of 2020 dated 15.06.2021

ii) ***The Managing Director, The Tamilnadu State Transport Corporation (Kumbakonam) Ltd. vs. Kumbakonam, Tanjore District and another vs. K.Perumal*** in W.A(MD)No.417 of 2024 dated 18.03.2024

5. The learned Standing Counsel appearing for the respondents submitted that the Judgment of the writ appeals cited by the learned counsel appearing for the petitioner is squarely applicable to the facts of the present case.

6. Heard the learned counsel appearing on either side and also perused the materials available on record.

7. It is seen that the issue is squarely covered by following decisions of the Hon'ble Division Bench of this Court:-

i) In ***The State Express Transport Corporation (Tamilnadu) Limited, Rep.by its Managing Director, Pallavan Salai, Chennai-02 and 3 Others vs. G.Senthil and another***, dated 15.06.2021, it has been held as under :-



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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



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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



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*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*



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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.

ii) *The Managing Director, The Tamilnadu State Transport Corporation (Kumbakonam) Ltd. vs. Kumbakonam, Tanjore District and another vs. K.Perumal* in W.A(MD)No.417 of 2024 dated 18.03.2024

2. The issue raised in this writ appeal is no longer res integra since the said issue has been elaborately discussed and a detailed order has been passed in W.A.(MD)No.345 of 2017 etc., batch dated 30.06.2017, which was followed in W.A.(MD)No.1270 of 2020 (the State Express Transport Corporation (Tamil Nadu) Limited, Represented by its Managing Director and Others vs. G.Senthil and another) dated 15.06.2021. Relevant portion of the said judgment, dated 15.06.2021, is extracted hereunder:-

10. In the light of the above “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



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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. "

8. In view of the above observations made by this Court in W.A.(MD)No.1270 of 2020 and W.A.(MD)No.417 of 2024 (cited supra), the respondents are directed to refund a sum of Rs.25,200/- (without interest) to the petitioner, and to settle all his terminal benefits such as gratuity, PF, the amounts payable under Social Security Scheme and



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Family Benefit Fund Scheme, Earned leave Salary, IRT Contributions and commuted value of pension with interest at the rate of 6% p.a. within a period of twelve weeks from the date of receipt of a copy of this order.

9. This writ petition stands disposed of with the above observation and direction. No costs.

22.01.2025

Index : Yes/No.
Internet : Yes/No.
Neutral Citation : Yes/No
Speaking : Non-speaking Order
kkd

To

- 1.The Managing Director,
Metropolitan Transport Corporation Ltd.,
2, Pallavan Salai, Anna Salai,
Chennai - 2.
2. The Senior Deputy Manager (HR)
Metropolitan Transport Corporation Ltd.,
2, Pallavan Salai, Anna Salai,
Chennai - 2.
3. The Administrator,
Tamil Nadu State Transport
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Trust, Thiruvalluvar Illam,



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Anna Salai, Chennai-2.

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J.SATHYA NARAYANA PRASAD, J.

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