



W.P.No.23523 of 2021

IN THE HIGH COURT AT JUDICATURE AT MADRAS

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DATED: 02.04.2025

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.23523 of 2021

and

WMP.No.24748 of 2021

K.Selvaraj

...Petitioner

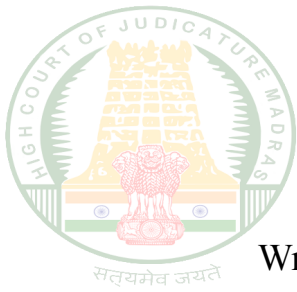
Vs.

1.The Managing Director,
Tamilnadu State Transport Corporation (Covai) Ltd,
Coimbatore-43.

2.The Assistant Manager,
Tamilnadu State Transport Corporation (Covai) Ltd,
Coimbatore-43.

3.The Branch Manager,
Tamilnadu State Transport Corporation (Covai) Ltd,
Mettupalayam-I,
Coimbatore.

...Respondents



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Writ petition is filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, directing the Respondent calling for the records pertaining to the Impugned order 383/ Pi3/ Sa Pa Pi/ Tha A Po Ka (COVAI) 2020 dated 13.01.2020 passed by the 2nd respondent deducted the amount of Rs.1,26,000/- (Rupees one lakh twenty six thousand) from the petitioner towards monetary value equivalent to unimplemented punishment of stoppage of increment and quash the same consequently direct the respondent to refund the deducted amount of Rs.1,26,000/- (Rupees one lakh twenty six thousand) with 18% annum payable from the date of relieving the petitioner from service 30.11.2019 to till the date of the amounts are settled to the petitioner.

For Petitioner : Mr.R.Jaikumar

For Respondents : Mr.A.Sundaravadhanan,
Standing Counsel

ORDER

The writ petition is filed challenging the impugned order dated 13.01.2020, of the 2nd respondent, whereunder a sum of Rs.1,26,000/- was deducted from the petitioner's terminal benefits towards unimplemented punishment of stoppage of increment, as illegal and invalid and for



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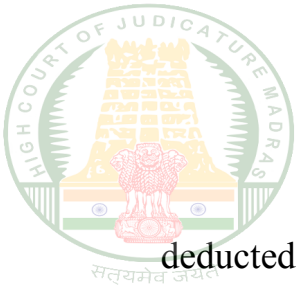
consequential direction to refund the said amount along with 18% interest.

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2. Heard both side counsels and perused the materials placed on record.

3. The summary of facts necessary for deciding the issue raised in the writ petition are as follows:

The petitioner was appointed as a Conductor in the respondent corporation, on 07.08.1987, and promoted as Special Grade Conductor. Whiles, the petitioner due to certain health issues opted for voluntary retirement from service. The petitioner was permitted to voluntarily retire from service vide order dated 31.12.2019, with effect from 30.11.2019. The petitioner while in service was proceeded departmentally for certain misconduct, committed by him and a punishment of stoppage of increment for a period of three years with cumulative effect was imposed on him. As the petitioner retired from service even before the punishment could be implemented, a sum of Rs.1,26,000/- towards unimplemented punishment was



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deducted from the petitioner's terminal benefits. Aggrieved by such recovery from his terminal benefits, the petitioner filed the above writ petition for the aforesaid relief.

4. The respondents in their counter, stated that they were entitled to recover the amount of Rs.1,26,000/- towards unimplemented punishment as per Rule 4 (1)(e) of the Common Service Rules. The respondents further submitted that in the absence of any guidelines with regard to the recovery of amount towards unimplemented punishment in the certified standing orders, they were well within their rights to invoke the Common Service Rules. In support of the said contention, the respondents relied on explanation to Rule 1(C) proviso (3) of Common Service Rules. The respondents hence prayed for the dismissal of the writ petition.

5. The facts narrated above are undisputed. The nub of the issue is whether the recovery of Rs.1,26,000/- made by the respondents from the



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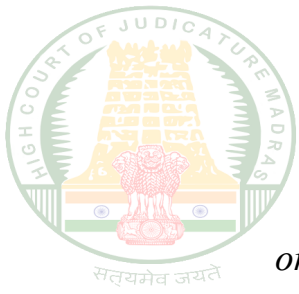
petitioner's terminal benefits is valid and sustainable.

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6. In my view the issue raised in the writ petition regarding the recovery of the unimplemented punishment post the petitioner's retirement, from his retiral benefits is no longer *res integra*.

7. The Hon'ble Division Bench of this court as early as in 2017, under identical factual situation and with regard to the transport corporation, though a different Division, settled the law in W.A.(MD) No's. 465 (batch) of 2013, vide its order dated 30.06.2017. The very same contentions were raised by the respondents, but the Hon'ble Division Bench repelled the same. While dealing with the applicability of Rule 4(1)(e) of the Common Service Rules, which rule is relied on by the respondents also, the Hon'ble Division Bench after holding that it was only the certified standing order that was applicable and not the common service Rules, held as follows:

“5.....Therefore, we have no hesitation to hold that the



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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. The respondents in order to overcome the above judgment submitted that in the absence of any guideline regarding recovery of unimplemented punishment, in the Certified Standing Orders, the provisions of the Common Service Rules could be invoked. The respondents relied on Rule 1(C)(3) of Common Service Rules in support of the said contention. The explanation to Rule 1(C) Proviso (3) of Common Service Rules reads as follows:

“Explanation: *If any provision of these Rules is repugnant to any of the provisions of the Certified Standing Orders of the Corporation, then the provisions of the Certified Standing Orders shall prevail and such provision in these Rules shall, to the extent of the repugnancy be void.”*



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Assuming without admitting, that the said contention can be approved, in the absence of any order during the service period of the petitioner, converting the stoppage of increment to recovery of 3 times the monetary value, the recovery cannot be permitted. Even the aspect of conversion of monetary value was considered by the Hon'ble Division Bench, but in relation to Clause 25(iv)(b) of the standing orders. The Hon'ble Division Bench held that “Management having failed to convert the punishment of stoppage of increment to that of order of recovery of monetary value, when the workman was 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. Though the Hon'ble Division Bench held as aforesaid in the context of Clause 25(iv)(b) of the Certified Standing Order's, in my view the same is applicable to Rule 4(1)(e) also. To appreciate it, it is appropriate to extract Rule 4(1)(e) .



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“4.Penalties:

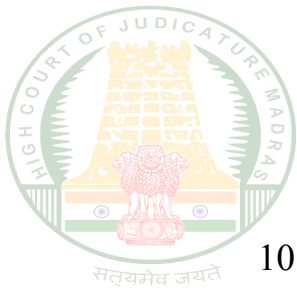
MAJOR PENALTIES:

(e) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld, where such an order cannot be given effect to.

Explanation: In case of stoppage of increment with cumulative effect, the monetary value equivalent to three times the amount of increments ordered to be withheld may be recovered.”

The explanation clearly states that 3 times the monetary value of stoppage of increment with cumulative effect ordered to be withheld could be recovered.

Underlining is made to highlight the point that an order withholding three times the monetary value of the amount of increment is mandatory, before recovery could be resorted to. In the absence of an order withholding three times the monetary value of the stoppage of increment with cumulative effect, in my view, no recovery could be made. Hence the said contention is rejected.



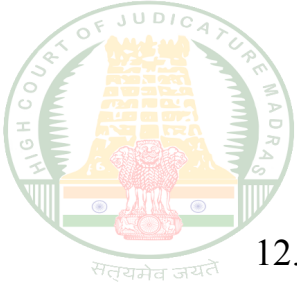
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10. One other important aspect which deserves to be considered here is that the recovery was made post retirement of the petitioner. The Hon'ble Supreme Court in the case of *State of Punjab and others versus Rafiq Masih (White Washer) and others*, reported in 2015 (4) SCC 334, while enumerating the various situations under which recoveries made by the employees would be impermissible in para 18(ii) held as follows:

“18. (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.”

11. Therefore, viewed from any angle the impugned order cannot be sustained and hence it is set aside. The next question is whether the petitioner is entitled to interest on the recovered amount. In my view, the amount of Rs.1,26,000/- was deducted from the petitioner's terminal benefits without authority of law and so, the petitioner would be entitled to reasonable interest.



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12. For all the above reasons, the writ petition is allowed. A direction is issued to the respondents to refund the sum of Rs.1,26,000/- along with 6% interest within a period of eight(8) weeks from the date of receipt of a copy of this order. It is made unequivocally clear that if the aforesaid direction is not complied with, within the time stipulated, then, the said amount of Rs.1,26,000/- shall be refunded along with interest at 18% till the date of payment.

The writ petition is accordingly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

02.04.2025

Index:Yes/No

Speaking order:Yes/No

Neutral Citation:Yes/No

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N.MALA,J.

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