



WP(MD) No.8463 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED : 20.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

WP(MD) No.8463 of 2019
and
WMP(MD) No.6630 of 2019

M.Manoharan

.. Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai)Ltd.,
Byepass Road,
Madurai - 16.

2.The General Manager,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Dindigul Region,
Dindigul - 4.

3.The Assistnat Manager,
Tamil Nadu State Transport Corporation (madurai) Ltd.,
Dindigul Region,
Dindigul - 4.

.. Respondents



WP(MD) No.8463 of 2019

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records connected with the impugned order of recovery passed by the second respondent in Paravai CES/DGL/RO/561 dated 10.01.2023 and quash the same and consequently direct the respondents to release and refund the withheld amount of Rs.1,98,339/- effected from the Terminal Benefits of the petitioner along with the interest at the rate of 18 percentage per annum.

(Prayer amended vide Court order dated 17.10.2024 in WMP.(MD).No. 3064 of 2023 in WP.(MD).No.8463 of 2019 by AQJ)

For Petitioner : Mr.S.Govindan

For Respondent : Mr.J.Senthil Kum

ORDER

Under assail is the order passed by the second respondent dated 10.01.2023.

2. The case of the petitioner is that the writ petitioner was dismissed from service and again he had raised an industrial dispute in ID.No.13 of 2024, the Labour Court order dated 10.09.2008 set aside the order of dismissal and directed the respondent corporation to reinstate into service.



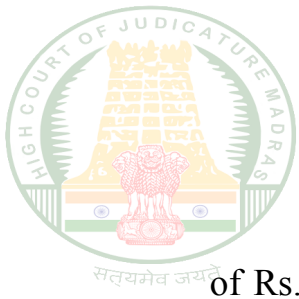
WP(MD) No.8463 of 2019

WEB COPY

3. The management has preferred a writ petition in WP.No.1273 of 2009 and vide letter order dated 16.04.2014 dismissed the writ petition. The said order was not complied with and he has filed a contempt petition in Cont.P.No.1502 of 2014 and while hearing the condone petition the respondent agreed to settle benefits and sought for time to balance terminal benefits and based on the undertaking given by the respondents, the contempt petition was closed on 10.08.2015.

4. The writ petitioner filed WP(MD).No.20910 of 2018, vide order dated 05.10.2018, this Hon'ble Court directed the respondents to settle the pension and other benefits in twelve equal instalments, the first instalment to commence from 2018 onwards. The said order was not complied with the writ petitioner had filed a Cont.P.No.04 of 2019 and subsequently the petition came to be closed.

5. The respondents instead of complying the order passed in W.P.No.20910 of 2018, they sent a communication on 07.02.2019 directing him to pay the amount of Rs.1,98,339/- alleging excess payment. He sent a legal notice on 16.02.2019 to stop recovery without considering the same, the 3rd respondent had sent another communication on 23.03.2019 compelling the petitioner to forcefully accept for recovery



WP(MD) No.8463 of 2019

WEB COPY

of Rs.1,98,339/-. The respondent had sanctioned reduced pension of Rs. 8600/-. He retired on 31.03.2014. Hence this writ petition.

5(i). During the pendency of the writ petition *vide* order dated 09.12.2022, this Court has issued an interim direction for observation home in the following terms:-

“The impugned order that is challenged before this Court is only a notice directing the petitioner to appear in person. The learned Counsel appearing for the petitioner submitted that the notice only states to appear, but the petitioner is not aware of what purpose the amount of Rs.1,98,339/- is being withhold. Therefore, this Court is inclined to grant interim direction, directing the petitioner to appear before the respondents on 19.12.2022 in Dindigul. The respondents shall complete the enquiry within a period of four weeks from today and report the same before this Court on 23.01.2023.

2. Post the case on 23.01.2023.”

6. Subsequently the petitioner filed a miscellaneous petition in WMP(MD).No.3064 of 2023 to challenge the subsequent order impugned dated passed by the third respondent, the said petition was allowed on 17.10.2024. Thereafter the prayer in this petition has been amended.

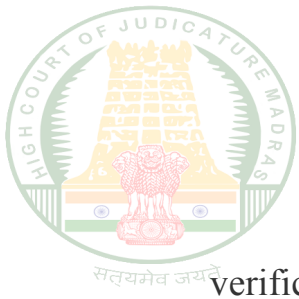


WP(MD) No.8463 of 2019

WEB COPY

7. The learned counsel appearing for the writ petitioner would submit that there was no misrepresentation or otherwise on the part of the petitioner and the excess pay has been granted to the writ petitioner cannot be recovered from him, to strengthen his contention, he has relied upon the judgment of the Hon'ble Supreme Court reported in [2015 4 SCC 334] in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc.** to show that the recovery from the employee when the payment has been made for a period in excess after five years cannot be recovered from the employee, he also relied upon the judgment reported in [2024 (5) CTC 433] in the case of Jagdish Prasad Singh Vs. State of Bihar and Ors. to show that reducing the pay scale without affording any opportunity to the employee.

8. *Per-contra*, the learned counsel appearing for the third respondent would submit that during the pendency of the contempt petition, Cont.P.No.1502 of 2014, the respondent-management without proper consideration of the Labour Court Award, the management inadvertently fixed the writ petitioner's salary basic Rs.11,950/- + Grade pay Rs.2,200/- instead of Salary basic Rs.10,245/- + Grade Pay Rs. 2,000/- and disbursed the benefits to the petitioner. Thereafter, on



WP(MD) No.8463 of 2019

WEB COPY

verification, it revealed that the Labour Court in its Award granted only reinstatement and denied the other benefits and the same was also confirmed by this Court in WP(MD).No.1273 of 2009.

9. He would submit that that excess payment made to the petitioner has to be recovered, to strengthen his contentions he has relied upon the judgment of this court in [WP(MD).No.17123 of 2015 dated 03.02.2022] in the case of the **R.Aundichamy Vs. General Manager, Tamil Nadu State Transport Corporation, Dindigul Division, Dindigul and Ors** to show that the employee is bound to pay the illegal amount in his hands. He would submit that in the above order this Hon'ble Court has clearly distinguished the judgment of white washer case and also considered the another judgment of the High Court of Punjab and Haryana and others Vs. Jagdev Singh reported in [2016 14 SSC 2007]. He would submit that there is no impediment in the recovery order.

10. This Court considered the submissions made on either side and it is seen from the records that the petitioner was dismissed from service against which he has preferred an industrial dispute ID.No.13 of 2004 before the Labour Court, Madurai. The Labour Court vide order dated 10.09.2008, set aside the order of dismissal from service and directed to



WP(MD) No.8463 of 2019

WEB COPY

reinstate in service with continuity of service without backwages.

Aggrieved over the same, the respondent-management challenged the award of Labour Court in ID No.13 of 2004 before this court in WP(MD).No.1273 of 2009. Thereafter, the contempt petition came to be filed in Cont.P(MD).No.1502 of 2014, while hearing the contempt petition vide order dated 10.08.2015, the respondent/transport corporation is directed to settle the 75% of the terminal benefits to the petitioner in ten instalments commencing from October 2015.

11. It is also observed that retirement benefits of the petitioner are directed to be settled by way of ten installments and the first instalment to be paid from October 2025 and each of the instalment on or before 7th of every month. Thereafter the writ petitioner has filed a WP(MD) No. 20910 of 2018 directing the respondent corporation to settle the pensionary benefits with a condition that of pension from the date of his retirement i.e., 01.04.2015 along with 18 % for the belated payment of pension benefits. This Court vide letter dated 09.10.2018 in WP(MD).No.20910/2018 has passed the follow order:-

“4. When the matter is taken up for hearing, the learned counsel appearing for the respondents would submit that the respondents are ready to pay



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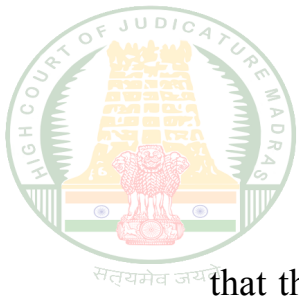
WP(MD) No.8463 of 2019

pensionary benefits in 12 equal monthly installments commencing from the First December 2018 together with interest at 6% p.a.

5. In view of the above said submission, the respondents are directed to pay pensionary benefits due to the petitioner in 12 equal monthly instalments. The first instalment shall be commenced from October 2018 onwards and the same shall be paid on or before 10th of every subsequent months. For the month of October 2018 alone the pensionary benefit has got to be paid on or before 2nd November 2018.”

12. It is seen from the records thereafter, the respondent corporation has issued letter dated 23.03.2019 calling upon the writ petitioner to give consent of recovery of Rs.1,98,339/- allegedly to have been paid in excess. The same order impugned came to be challenged by way of this writ petition. While pending the writ petition by an order of interim direction as given vide order dated 09.12.2022, directing the petitioner to appear before the respondent on 09.12.2022 and the respondent shall complete the enquiry within a period of four weeks and in compliance of the directions, this Court's subsequent order came to be passed on 10.01.2023.

13. The order impugned is confirmed, the earlier notice issued by the respondent-corporation and order to recover the amount of Rs. 1,98,339/- allegedly said to have been paid in excess. It is not in dispute



WP(MD) No.8463 of 2019

WEB COPY

that the writ petitioner has preferred for non-compliance of the payment of the pensionary benefits. He chosen to file WP(MD).No.20910 of 2018.

14. A bare perusal of the order impugned shows that on the part of the writ petitioner there was no misrepresentation or otherwise. However excess payment of Rs.1,98,339/- was ordered for recovery. The Labour Court Award was issued on 10.01.2008 after lapse of more than a decade and after his retirement dated 31.03.2014 after lapse of nine years, the order impugned notice has been issued. However the excess payment already paid to the petitioner cannot be recovered, this Court is of the opinion that there is no impediment to correct the errors in respect of fixation of pay. In this regard, Hon'ble Apex Court of India also enumerated the legal principles in the case of **State of Punjab Vs. Rafiq Masih** reported in [(2015) 4 Supreme Court Cases 334] in paragraph number eighteen of the judgment is relevant and the same is extracted hereunder:-

“18.It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarize the following few situations, wherein



recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

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

(iii) Recovery from the 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 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

15. The writ petitioner is a retired employee and the impugned order of recovery after lapse of nine years from the date of his retirement, there is no misrepresentation on the part of the writ petitioner and the recovery imposed is in violation of legal principles. However it is made clear that the scale of as applicable and the revision of pension as per the government orders in force can be granted to the writ petitioner and if any mistakes had occurred, the same can be corrected by the Competent Authority. However the recovery cannot be made. Accordingly the



WP(MD) No.8463 of 2019

WEB COPY

Impugned order passed by the third respondent through proceedings in Paravai CES/DGL/RO/561 dated 10.01.2023, in respect of recovery alone is quashed and the respondents are directed to correct the errors if any in the the revision or scale of pay. Accordingly, this writ petition stands allowed. If any recovery is already made based on the impugned order, the same is directed to be reimbursed to the writ petitioner within a period of twelve weeks from the date of receipt of copy of this order. However, there shall be no order as to costs. Connected miscellaneous petition is closed.

20.03.2025

NCC : Yes
Index : Yes
Internet : Yes
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WP(MD) No.8463 of 2019

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WP(MD) No.8463 of 2019

M.JOTHIRAMAN, J.

nst

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and
WMP(MD) No.6630 of 2019

Dated: 20.03.2025