

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.10.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.19788/2015

P.Gurssami

...Petitioner

Vs

1. The Secretary,
Government of Tamilnadu
Environment & Forest Department
Secretariat, Chennai 600 009.
2. The Managing Director
Tamil Nadu Tea Plantation
Corporation Limited,
Registered Office, TANTEA Complex
Coonoor 643 101, The Nilgiris.
3. The Divisional Manager
Tamil Nadu Tea Plantation Corporation
Limited, Ryan Tea Division, Periyakallar
Post, Valparai Taluk, Coimbatore District
Pin 642 106.

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 2nd respondent to issue the enhanced Dearness Allowance on par with Government Employees as extended to Employees of TANTEA staff as per Staff Service Rule No.12 with effect from 01.01.2000 to 01.07.2012.

For Petitioner : Mr.P.Gurssami,
Party-in-person

For R1 to R3 : Mr.N.Inbanathan,
GA [Forests]

ORDER

By consent, the writ petition is taken up for final disposal.

2 The petitioner /Party-in-person joined the services of the Tamil Nadu Tea Plantation Corporation Limited [TANTEA] as Typist on 26.05.1982 and retired as Office Superintendent on 31.12.2012 and claims to have rendered 31 years of hard, sincere and blemishless services to the satisfaction of the superior officers.

3 The petitioner would state that on an earlier occasion, he filed WP.No.7423/2014 praying for issuance of a writ of certiorarified mandamus to quash the impugned proceedings dated 07.01.2014 passed by the 2nd respondent herein and consequently, to direct the 2nd respondent to issue 50% of Unearned Leave on private affairs on his retirement on the basis of the resolution dated 27.06.2008 passed by the Board of Directors of TANTEA. This Court has taken note of G.O.ms.No.488, Finance [Pension] Department dated 12.08.1996, extending the benefit of encashment of 50% of Unearned Leave on private affairs not only to the employees of the Government but also to the employees of all Statutory Boards and State Public Sector Undertakings and it is found that the petitioner is also eligible for encashment of 50% of Unearned Leave on Private Affairs and accordingly, allowed the writ petition. The petitioner would further contend that as per Rule 12 of the Staff Service Rules under the Head of "PAY AND ALLOWANCES" which states that "Pay, Dearness Allowance and Compensatory Allowances, shall be paid to the employees at the rates applicable to State Government employees from time to time". The grievance expressed by the petitioner is that the 2nd respondent has frozen the Dearness Allowance and it is clear violation of Articles 14 and 300-A of the Constitution of India and hence, came forward to file this writ petition.

4 The petitioner/Party-in-person has drawn the attention of this Court to paragraph 26 of the Articles of Association of TANTEA and would contend that as per the said Article, the Managing Director, subject to the provisions of the Act and these Articles shall be entitled to the Management of the whole of the affairs of the company and he shall exercise his powers as such Managing Director subject to the Superintendence, control and direction of the Board of Directors of the Company and also places reliance upon Rule 12 and would submit that in the light of the said mandatory rules, the freezing of the Dearness Allowance, payable to the

petitioner on the part of the respondents is per se illegal and prays for appropriate orders.

5 Per contra, Mr.N.Inbanathan, learned Government Advocate [Forests] has invited the attention of this Court to the counter affidavit and would submit that TANTEA has incurred loss for so many years as Tea market is highly volatile after Globalisation and it has accumulated loss for the past 10 years and the Dearness Allowance is being implemented depending upon the Cash Profit/financial position of the Corporation subsequently after getting approval of the Board of Directors each and every time. In fact, the variable Dearness Allowance for the period from 01.01.2002 to 31.12.2004 for the plantation workers has also been frozen and they were not given any enhanced Dearness Allowance. It is further submitted by the learned Government Advocate that the 2nd respondent/Corporation is not receiving budget/Fund Allotment from the State Exchequer and it has to manage the finance with its own generation of funds on sale of tea and since it is continuously suffering loss and also having accumulated loss for the past 10 years, the prayer sought for by the petitioner cannot be granted and prays for dismissal of the writ petition.

6 In response to the said submission, the petitioner/Party-in-person would submit that though the plantation workers are entitled to the statutory entitlement of 8.33% bonus under the Payment of Bonus Act, they have been paid with 20% of the bonus and apart from that, they are paid with Ex-gratia payment, which is not the statutory entitlement and therefore, it is not open to the 2nd respondent/Corporation to plead its inability to pay Dearness Allowance on the ground of the alleged accumulation of loss and prays for allowing the writ petition.

7 This Court has carefully considered the rival submissions made on either side and also perused the materials placed before it.

8 Rule 12 of the Staff Service Rules of the 2nd respondent/Corporation states that "Pay, Dearness Allowance and Compensatory Allowances, shall be paid to the employees at the rates applicable to State Government employees from time to time". It is also the stand of the 2nd respondent in the counter affidavit that the enhancement of Dearness Allowance @ 38% sanctioned from the Government from 01.01.2000, was extended to the employees of the 2nd respondent/Corporation also and however, for the year ended 31.03.2014, the

Corporation has an accumulated loss of Rs.1,885.56 Lakhs and the financial condition is very critical and it is also finding it difficult to meet out the day-to-day expenses and statutory commitments of its employees/workers and therefore it is unable to pay the Dearness Allowance. In the light of Rule 12 of the Staff Service Rules, the stand of the 2nd respondent is unsustainable. The Dearness Allowance is being paid to meet out the cost of living and this Court can take judicial notice of the fact that the cost of the essential commodities are increasing day-by-day and it is admitted by the 2nd respondent in its counter that they also pay Dearness Allowance @ 38% sanctioned by the Government from 01.01.2000 and was extended to the employees of the Corporation. It is the submission of the learned Government Advocate that in the event of fund requirement, they are approaching the Government and after getting necessary funds, they are disbursing the same to the employees. In the light of the said stand, there cannot be any impediment on the part of the respondents to approach the authorities concerned for getting necessary funds to pay the Dearness Allowance.

9 In the result, the writ petition is disposed of and the 2nd respondent is directed to pay the enhanced Dearness Allowance to the petitioner/Party-in-person in accordance with Rule 12 of the Staff Service Rules and also in the light of paragraph 6 of the Counter affidavit and the said exercise is to be completed within a period of ten weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

AP

To

1. The Secretary,
Government of Tamilnadu
Environment & Forest Department
Secretariat, Chennai 600 009.

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2. The Managing Director
Tamil Nadu Tea Plantation
Corporation Limited,
Registered Office, TANTEA Complex
Coonoor 643 101, The Nilgiris.

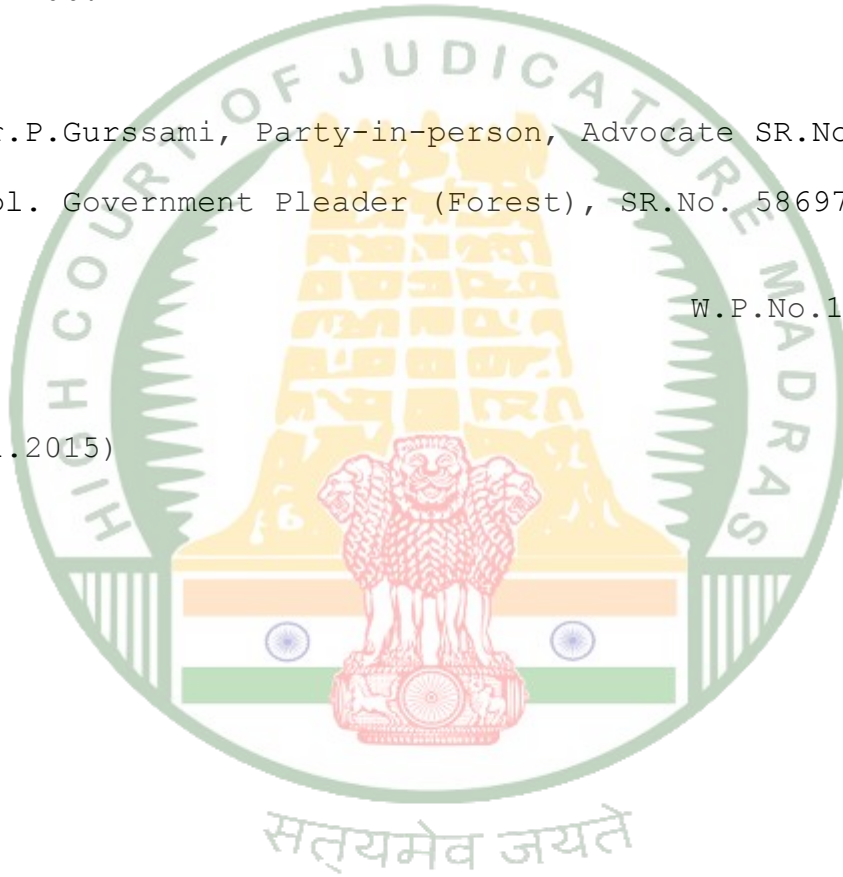
3. The Divisional Manager
Tamil Nadu Tea Plantation Corporation
Limited, Ryan Tea Division, Periyakallar
Post, Valparai Taluk, Coimbatore District
Pin 642 106.

1 CC to Mr.P.Gurssami, Party-in-person, Advocate SR.No. 58672

1 CC to Spl. Government Pleader (Forest), SR.No. 58697

W.P.No.19788/2015

GJ (CO)
PSI (16.11.2015)



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