IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.11.2016

CORAM

The Honourable MR. JUSTICE N.KIRUBAKARAN

W.P.Nos.38804 to 38807 of 2016
and W.M.P.Nos.33261 to 33264 of 2016

The Management
Tamilnadu State Express Transport
Corporation (Villupuram)
No.3/137 Salamedu Vazhudareddy Post
Villupuram 605 602
rep. by its General Manager [Petitioner in all the Petitions]

Vs

The Assistant Commissioner of Labour 2
DMS Compound Teynampet
Chennai 600 006
..1st respondent in all WPs

V.Vadivel ..2nd respondent in W.P.No.38804/16

N.Saravanan ..2nd respondent in W.P.No.38805/16

V.Selvaraj ..2nd respondent in W.P.No.38806/16

N.Dharumarajan ..2nd respondent in W.P.No.38807/16

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records on the file of the Assistant Commissioner of Labour Chennai made in PG Nos.201,200,202 and 199 of 2013 respectively dated 21.4.2014 and quash the same.

For Petitioner : Mr.P.Kannan Kumar
in all Petitions

For Respondents : Mr.T.M.Pappiah, SGP (R1)
in all Petitions

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COMMON ORDER

The writ petitions have been filed challenging the orders 21.4.2014 of the Assistant Commissioner of Labour-2, Chennai made in PG Nos.201,200,202 and 199 of 2013 respectively.

2. The respective 2nd respondents were the workmen under the petitioner Management and they retired in October 2009. After retirement, the Dearness Allowance has been increased and in this regard, a G.O. was issued in January 2010, giving retrospective effect. Therefore, claiming retrospective benefit, the respective 2nd respondents have approached the 1st respondent by filing G.P.Nos. 201,200,202 and 199 of 2013 respectively. The 1st respondent, by orders dated 21.04.2014, had granted the difference in gratuity to the tune of Rs.33,941/-, Rs.11,029, Rs.16,155/- and Rs.16,937/- respectively along with 10% interest to the respective 2nd respondents. The said orders are being challenged before this Court.

3. In a similar situation, a Single Judge of this Court in a batch of writ petitions in W.P.Nos.20116 to 20122 of 2014, by order dated 22.12.2015, has rejected the contention of the petitioner therein to the effect that the revised Dearness Allowance would be applicable only from the date of the Government Order and not retrospectively. While dealing with the matters, the Single Judge of this Court, after elaborately discussing about giving effect to various Government Orders, stated that whenever the Government revises the Dearness Allowance with retrospective effect, it is made applicable to pensioners and family pensioners and consequent upon such revision in the rates of Dearness Allowance results in revision of pension. Paragraph Nos.13 and 14 of the said order dated 22.12.2015 made in W.P.Nos.20116 to 20122 of 2014 are usefully extracted hereunder:-

> "13. This submission is totally flawed, since Dearness Allowance is increased not only to the serving employees, but to pensioners and the family pensioners. This is evident from the Government Orders produced by the petitioner Management in their typed set of papers. By way of illustration, if we see G.O.Ms.No.100, Finance (Education Department), dated 30.11.2011, the Government has issued orders sanctioning additional Dearness Allowance to pensioners and family pensioners with effect from 01.01.2011 (retrospective effect).

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Similarly G.O.Ms.No.280, dated 07.10.2011, with effect from 01.07.2011, the Government letter Ms.No.108, dated 06.06.2012, enhancing the Dearness Allowance with retrospective effect from 01.01.2012 to all employees of State Transport undertakings; similar is the G.O.Ms.No.249, dated 27.12.2013, enhancing the Dearness Allowance to employees of State Transport Undertakings from 80% to 90% with retrospective effect from 01.07.2013; G.O.Ms.No.55, dated 04.06.2014, enhancing the Dearness Allowance to the employees of the State Transport Undertakings from 90% to 100% with retrospective effect from 01.01.2014; G.O.Ms.No.245, dated 10.10.2015, revising retrospectively the Dearness Allowance to 107% which was made applicable to the employees of the State Transport Undertakings with retrospective effect from 01.07.2014 vide G.O.Ms.No.147, dated 30.12.2014; G.O.Ms.No.121, dated 22.04.2015, increasing Dearness Allowance to 113% and G.O.Ms.No.262, dated 16.10.2015, revising the rate of Dearness Allowance to 113%. Thus, it is clear that whenever the Government revises the Dearness Allowance with retrospective effect, it is made applicable to pensioners and family pensioners. Consequent upon such revision in the rates of Dearness Allowance results in revision of pension. While computing gratuity, Dearness Allowance is one of the components to be taken into consideration. Therefore, if there has been a retrospective revision in the rates of Dearness Allowance, it goes without saying that such increase to be made applicable for computation of gratuity for the period during which the workmen were in service. This differential amount was sought for by the Workmen and when the Management failed to accede to their genuine demand, they were compelled to file applications for computation before the Controlling Authority. The settled law being that gratuity is not a bounty, but a reward for past services. Therefore, when there is a revision of Dearness Allowance made retrospectively and on account of the retrospective revision of rates, if the

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concerned workmen was in services at the relevant point of time, necessarily the gratuity also has to be calculated giving the benefit of the increase in Dearness Allowance. This has been rightly done by the Controlling Authority.

14. As noticed above before the Controlling Authority, the petitioner Management did not dispute the applicability of the Government Orders revising the Dearness Allowance with retrospective effect. It is stated by the learned counsel for the respondent Workmen that pension payable to the Workmen has been revised. However, the revised Dearness Allowance is yet to be paid to them for which they have been making representations. If the Dearness Allowance has been revised retrospectively by the Government and made applicable to State Transport Undertakings such revised Dearness Allowance has also to be paid to the workmen concerned. Therefore, there is no error in the manner in which the computation has been done. On a reading of the impugned order, it is clear that the Controlling Authority has computed the amount after conducting enquiry, after considering the stand taken by either party and in particular the counter filed by the petitioner Management. Therefore, this Court is satisfied that the Controlling Authority has conducted the enquiry in terms of the stipulation contained in Section 7(4)(c) and there is no error in the decision making process".

4. In view of the same, the orders passed by the 1st respondent are sustainable and the same cannot be set aside. Hence, the writ petitions are dismissed. There shall be a direction to the petitioner to pay the difference in gratuity amount as determined by the 1st respondent, within a period of six weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner of Labour 2
DMS Compound Teynampet
Chennai 600 006.

2.The General Manager,
The Management,
TamilNadu State Express Transport Corporation,
(Villupuram)
No.3/137, Salamedu,
Villupuram-600 602.

+1cc to Mr.P.Kannankumar, Advocate sr.64737

W.P.Nos.38804 to 38807 of 2016

vd[co]
srg 05/12/2016

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