BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2016

C O R A M

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.(MD) No.12751 of 2015

S.S.Rajendran .. Petitioner

Vs.

1. The Management of Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., Represented by its Managing Director, Kumbakonam.

2. The General Manager, The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., Pudukkottai Region, Thirumayam Road, Pudukkottai.

3. The Administrator, Tamil Nadu State Transport Corporation, Pension Fund Trust, Thiruvalluvar House, Pallavan Salai, Chennai-2. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring the action of the respondents in computing retirement benefits of the petitioner including gratuity, leave salary etc., payable to the petitioner by taking into account the dearness allowance payable on his pay / wages at the rate of 51% instead of 58% as illegal, unjust and arbitrary and consequently direct the respondents to compute and pay the difference amount in gratuity, leave salary, payable to the petitioner by taking into account revised rate of dearness allowance, i.e. at the rate of 58% of pay + Grade Pay in accordance with G.O.273, Finance (Allowances) Department dated 03.10.2011 within the time limit that may be fixed by this Court and in terms of sanctioning letter of 3rd respondent in letter (MS) No.191 dated 30.11.2011.

For petitioner ... Mr.A.Rahul
For R1 & R2 ... Mr.D.Sivaraman
For R3 ... Mr.A.P.Muthupandian

O R D E R

The petitioner joined the services of the first respondent corporation as Conductor with effect from 26.08.1979; that he was promoted as Checking Inspector with effect from 20.08.1999 and he retired from service on 31.08.2011 in the said post and the petitioner seeks to declare the action of the respondents in computing retirement benefits of the petitioner including gratuity, leave salary etc., payable to the petitioner by taking into account the dearness allowance payable on his pay / wages at the rate of 51% instead of 58% as illegal, unjust and arbitrary and consequently direct the respondents to compute and pay the difference amount in gratuity, leave salary, payable to the petitioner by taking into account revised rate of dearness allowance i.e., at plus grade pay at the rate of 90% instead of 100% as illegal and contrary to G.O.Ms.No.55, Transport Department dated 04.06.2014 issued by the Government of Tamil Nadu and consequently, direct the respondents to compute and pay to the petitioner the difference in gratuity, leave salary and commuted value of pension by taking into account the revised rate of dearness allowance, i.e. at the rate of 58% of pay + Grade Pay in accordance with G.O.273, Finance (Allowances) Department dated 03.10.2011 and in terms of sanctioning letter of 3rd respondent in letter (MS) No.191 dated 30.11.2011.

2. Whenever the Government orders increase in Dearness Allowance to Government employees, the same shall be extended to Transport Corporation Employees, is the commitment made by the respondent in the settlement effected under Section 12(3) of the Industrial Disputes Act.

3. Rule 20-A of the Tamil Nadu State Transport Corporation Pension Fund Rules deals with Dearness Allowance payable to pensioners, which states that in addition to basic pension, the pensioners are eligible for nominal Dearness Allowance at the rates that may be determined by the Government of Tamil Nadu. But, the provision was not immediately made applicable to the employees of the Transport Corporation. The practise was that every time, the 3rd respondent had to seek the approval of the Government for enhancement of Dearness Allowance. Therefore, in order to avoid delay, the retired employees Welfare Association filed W.P.34530 of 2012 before the Principal Seat of Madras High Court, seeking amendment of Rule 20(A) of the TNSTC Pension Fund Rules.

4. The Principal Seat directed the 3rd respondent Trust to forward the proposal to Government seeking amendment to Rule 20(A) of the Pension Fund Rules.

5. The 3rd respondent Trust filed an affidavit stating that whenever Government orders enhancement of D.A., the subject will be placed before the Trustees of the 3rd respondent Trust and after getting approval of the Board of Trustees, the increased D.A., will be effected to pensioners / family pensioners in future. Therefore, according to the stand taken by the 3rd respondent, the approval of the Government is no longer required.

6.However, there is also a Government Order in G.O.273, Finance (Allowances) Department dated 03.10.2011 for enhancement of Dearness Allowance to all State Employees, based on which, a letter of sanction was issued by the 3rd respondent, extending the said benefits to Transport Corporation Employees and the said letter reads as under:

> "I am directed to invite attention to the references cited, and to inform that the Government accord sanction for enhancement of Dearness Allowance from 51% to 58% with effect from 01.07.2011 to Managerial Cadre Officers / Adminstrative and Technical Supervisors and to the employees of State Transport Undertakings covered under 12(3) Wage Settlement, subject to the conditions stipulated in the Government letter first cited.
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> 2. I am also to inform that the entire financial commitment likely to arise on account of enhancement of the above Dearness Allowance should be borne by the State Transport Undertakings, without seeking any financial assistance directly or indirectlyl from the Government."

7.Thus, it is clear that the petitioner is entitled to the applicable Dearness Allowance, which shall be calculated, taking the rate of Dearness Allowance as ***58% and not as 51%***. Therefore, the writ petition is ordered. The respondent shall effect fresh calculation by taking the D.A. as ***58%*** on the Basic Pay and Grade Pay and pay the dues / balance to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

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To:

1. The Management of Tamil Nadu
State Transport Corporation (Kumbakonam) Ltd.,
Represented by its Managing Director,
Kumbakonam.

2. The General Manager,
The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Pudukkottai Region, Thirumayam Road,
Pudukkottai.

3. The Administrator,
Tamil Nadu State Transport Corporation,
Pension Fund Trust, Thiruvalluvar House,
Pallavan Salai, Chennai-2.

+1cc to Mr.D.Sivaraman Advocate Sr.No. 66212
+1cc to M/S.A.RAHUL, ADVOCATE SR.No.65123

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3/3
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