



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2016

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THE HONOURABLE DR.JUSTICE S.VIMALA

W.P(MD)No.21910 of 2016

A.Gomathi

... Petitioner

vs.

1)Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Rep. by its Managing Director,
Kumbakonam.

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

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

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to revise last drawn pay of the petitioner's husband by taking dearness allowance at the rate of 45% of the basic pay and grade pay as per Tamilnadu Government Letter (MS)No.183 Transport (D) Department dated 17.11.2011 and by applying new pay band introduced for the conductors of the 1st respondent corporation from 01.09.2010 as per 12(3) Settlement dated 22.01.2011 and consequently direct the respondents to compute, refix the pay of the petitioner's husband as on the date of his retirement by taking dearness allowance at 45% and by applying new pay revision pattern introduced in the above settlement and to pay her, the difference amount in gratuity, leave salary, monthly pension, family pension and in all other terminal benefits within the time that may be stipulated by this Hon'ble Court.

For Petitioner : Mr.A.Rahul

For R1 & R2 : Mr.D.Sivaraman

For R3 : Mr.A.P.Muthupandian

ORDER

The petitioner's husband served as Conductor under the first respondent corporation with effect from 27.07.1981 and he retired from service on 30.11.2010 in the post of Special Grade Conductor and he passed away on 24.06.2011. The petitioner seeks to issue a Writ of Mandamus, directing the respondents to revise last drawn pay of her husband, by taking dearness allowance at the rate of 45% of the basic pay and grade pay, as per Tamilnadu Government Letter (MS) No.183 Transport (D) Department, dated 17.11.2011 and by applying new pay band introduced for the conductors of the 1st respondent corporation from 01.09.2010 as per 12(3) Settlement dated 22.01.2011, and consequently to direct the respondents to compute, refix the pay of the petitioner's husband as on the date of his retirement by taking dearness allowance at 45% and by applying new pay revision pattern introduced in the above settlement and to pay her the difference amount in gratuity, leave salary, monthly pension, family pension and in all other terminal benefits, within the time that may be stipulated by this Court.

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 Letter (MS) No. 183, Transport (D) Department, dated 17.11.2011, applying enhancement of Dearness Allowance to Transport Corporation Employees and the relevant portion of the said letter reads as under:

"4. As per the terms of Wage Settlement, 2010, reached between the employees of State Transport Undertakings and the Management, the rate of Dearness Allowance is fixed at 45% with effect from 1-9-2010 and that as and when Dearness Allowance is increased to the Government employees, the same percentage will be given effect to the employees of State Transport Undertakings.

5. The Administrator, Tamil Nadu State Transport Corporation Employees' Pension Fund Trust, in the letter 4th cited has therefore, sent proposals to the Government for adoption of revised rate of Dearness Allowance in percentage sanctioned for the employees covered under 12 (3) settlement to the Pensioners of State Transport Undertakings also.

6. The Government have carefully examined the proposal of the Administrator, Tamil Nadu State Transport Corporation Employees' Pension Fund Trust and accord approval to revise the Dearness Allowance to the pensioners covered under 12(3) Settlement on par with Government employees with effect from 1-9-2010, subject to the condition that the entire amount likely to arise on revision of Dearness Allowance will be met by the Tamil Nadu State Transport Corporation Employees' Pension Fund Trust without seeking any financial assistance in any form from the Government."

7. Thus, it is clear that the petitioner's husband is entitled to the applicable Dearness Allowance, which shall be calculated, taking the rate of Dearness Allowance as 45%. Therefore, the writ petition is ordered. The respondent shall effect fresh calculation by taking the D.A. as 45% 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 (CS-II)

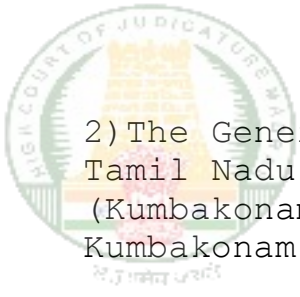
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Sub Assistant Registrar

To

1) The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Kumbakonam.



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

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

+1CC to Mr.A.Rahul, Advocate Sr.No.69410
+1CC to Mr.D.Sivaraman, Advocate Sr.No.70034

SMA/SKN/20.12.16-4p-6C

W.P (MD) No.21910 of 2016
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