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.21911 of 2016

K.Ravindrarajan ... 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 Illam,
Pallavan Salai,
Chennai-2. ... Respondents

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 the gratuity, leave salary payable to the petitioner by taking into account the dearness allowance payable on his basic pay plus grade pay at the rate of 90% instead of 100% as illegal and contrary to the G.O.(Ms)No.55 Transport (D) Department dated 04.06.2014 issued by the Government of Tamil Nadu and consequently direct the Respondents to compute and pay him, the difference amount in gratuity, leave salary by taking into account the revised rate of dearness allowance i.e. at the rate of 107% of pay + Grade Pay as fixed in G.O.(Ms)No.55 Transport (D) Department dated 04.06.2014 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 served as Conductor under the first respondent corporation with effect from 19.08.1979 and he retired from service on 31.05.2014 in the post of Selection Grade Checking Inspector and the petitioner seeks to declare the action of the respondents in computing the gratuity, leave salary payable to him by taking into account the dearness allowance payable on his basic pay plus grade pay at the rate of 90% instead of 100% as illegal and contrary to the G.O.(Ms)No.55 Transport (D) Department dated 04.06.2014 issued by the Government of Tamil Nadu and consequently to direct the respondents to compute and pay him, the difference amount in gratuity, leave salary by taking into account the revised rate of dearness allowance i.e. at the rate of 100% of pay + Grade Pay as fixed in G.O.(Ms)No.55 Transport (D) Department dated 04.06.2014 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 Order in G.O.(Ms)No.55 Transport (D) Department dated 04.06.2014, applying enhancement of

Dearness Allowance to Transport Corporation Employees and the said Government Order reads as under:

> "5. The Government after careful examination accept the request of Managing Directors of all State Transport-Undertakings and accord sanction for enhancement of Dearness Allowance from 90% to 100% with effect from 01.01.2014 to Managerial Cadre Officers / Administrative and Technical Supervisors and to the employees of State Transport Undertakings covered under 12(3) Wage Settlement subject to the condition that the entire financial commitment likely to arise on account of enhancement of the Dearness Allowance should be borne by the State Transport Undertakings without seeking any financial assistance directly or indirectly 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 100% and not as 90%. Therefore, the writ petition is ordered. The respondent shall effect fresh calculation by taking the D.A. as 100% 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)

/True Copy/

Sub Assistant Registrar

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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.69411
+1CC to Mr.D.Sivaraman, Advocate Sr.No.70035

SMA/SK/20.12.16-3p-6c

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