BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 16.09.2016
Order pronounced on : 03.11.2016

C O R A M

THE HONOURABLE DR.JUSTICE S.VIMALA

Writ Petition (MD) No.7938 of 2016

V.Ganapathiraman .. Petitioner

Vs.

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

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

3. The Administrator,
The Tamil Nadu State Transport
Corporation Pension Fund Trust,
Thiruvalluvar Illam, Pallavan Salai,
Chennai - 600 002. .. 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 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 58% instead of 65% as illegal and contrary to the Letter (Ms)No.109/D/2012 Transport (D) Department dated 06.06.2012 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 65% of pay + Grade Pay as fixed in Letter (Ms) No.109/D/2012, Transport (D) Department, dated 06.06.2012 within a stipulated time.

For petitioner ... Mr.A.Rahul
For R1,R2&R3 ... Mr.A.Jeyaram

O R D E R

The petitioner served as Tradesman under the first respondent corporation with effect from 01.10.1980 and he retired from service on 31.03.2012 in the post of Assistant Manager and the petitioner seeks to declare the action of the respondents in computing the retirement benefits (gratuity, leave salary / pension), payable to the petitioner by taking into account the Dearness Allowance payable (on the basic pay + grade pay) at the rate of 58% instead of 65% as illegal and contrary to the 12(3) settlement and also to the Letter (Ms) No.109/D/2012 Transport (D) Department dated 06.06.2012 issued by the Government of Tamil Nadu and consequentially direct the respondents to compute and pay the difference in retirement benefit (**gratuity, retirement benefit / pension**) by taking into account the revised rate of Dearness Allowance at the rate of 65% on the basic pay + Grade Pay.

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 everytime, 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, applying enhancement of Dearness Allowance to Transport Corporation Employees and the Government Order reads as under:

> "5. The Government have carefully examined the proposal of the Administrator, Tamil Nadu State Transport Corporation Employees' Pension Fund Trust and accord sanction for enhancement of Dearness Allowance from 58% to 65% with effect from 01.01.2012 to all the pensioners/family pensioners of State Transport Undertakings subject to the condition that the Tamil Nadu State Transport Corporation Employees Pension Fund Trust should meet the entire amount without seeking any financial assistance 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 65% and not as 58%. Therefore, the writ petition is ordered. The respondent shall effect fresh calculation by taking the D.A. as 65% 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 (RTI)

/True Copy/

Sub Assistant Registrar

To

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

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

3. The Administrator,
   The Tamil Nadu State Transport
   Corporation Pension Fund Trust,
   Thiruvalluvar Illam, Pallavan Salai,
   Chennai - 600 002.

+ 1 CC TO Mr.A.RAHUL, ADVOCATE IN SR No. 65985

RJ2
TE/SS-2 : 20/12/2016 : 3P/5C

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