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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.8305 of 2016

M.Selvaraj .. Petitioner

Vs.

1. The State Express Transport Corporation (Tamil Nadu) Ltd., Represented by its Managing Director, Pallavan Salai, Chennai-2.

2. The Administrator, 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 the petitioner's basic pay plus grade pay at the rate of 100% instead of 107% as illegal and contrary to the G.O.(Ms) No.245 Finance (Allowances) Department dated 10.10.2014 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 revised rate of dearness allowance i.e., at the rate of 107% of pay + grade pay as fixed in G.O.(Ms) No.245 Finance (Allowances) Department dated 10.10.2014 within the time that may be stipulated by this Hon'ble Court.

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

O R D E R

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The petitioner joined the services of the respondent corporation as Technical Assistant with effect from 14.09.1978; that he was subsequently promoted as Junior Engineer and he retired from service on 31.07.2014 in the said post and the petitioner seeks to declare the action of the respondents in computing the gratuity, leave salary payable to the petitioner by taking into account the dearness allowance payable on the petitioner's basic pay plus grade pay at the rate of 100% instead of 107% as illegal and contrary to the G.O.(Ms) No.245 Finance (Allowances) Department dated 10.10.2014 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 revised rate of dearness allowance i.e., at the rate of 107% of pay + grade pay as fixed in G.O.(Ms) No.245 Finance (Allowances) Department dated 10.10.2014.

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 respondent Trust 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 Trust to forward the proposal to Government seeking amendment to Rule 20(A) of the Pension Fund Rules.

5. The Trust filed an affidavit stating that whenever Government orders enhancement of D.A., the subject will be placed before the Trustees of the 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 respondent Trust, the approval of the Government is no longer required.

6. However, there is also a Government Order in G.O.No.245 Finance (Allowances) Department dated 10.10.2014 for enhancement of Dearness Allowance to all State Employees from 100% to 107% and as per the stand of the Trust, the said benefits should also be extended to Transport Corporation Employees.

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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 ***107% and not as 100%***. Therefore, the writ petition is ordered. The respondent shall effect fresh calculation by taking the D.A. as ***107%*** 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 (AE)

/True Copy/

Sub Assistant Registrar

+ 2 CC TO Mr.A.RAHUL, ADVOCATE IN SR No. 65118, 65119
+ 2 CC TO Mr.K.SATHIYA SINGH, ADVOCATE IN SR No. 65009, 65514

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TE/GSV-PM : 30/11/2016 : 3P/5C

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