IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.08.2017**

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P.No.21424 of 2017
and W.M.P.Nos.22391 and 22392 of 2017

The Management,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
No.3/137, Salamedu, Vazhudareddy Post,
Villupuram - 631 502. ...Petitioner

/versus/

1.The Assistant Commissioner of Labour - 2,
D.M.S. Complex,
Teynampet,
Chennai - 600 006.

2.N.Gunasekaran ...Respondents

Prayer: Writ Petitioner filed under Article 226 of the Constitution of India to call for the records on the file of the Assistant Commissioner of Labour, Chennai made in PG.No.2 of 2012 order dated 21.04.2014 and quash the same.

For Petitioner	:	Mr.P.Kannan Kumar
For Respondents	:	Mr.R.S.Selvam Government Advocate

O R D E R

The Writ Petition is preferred against the Order dated 21.04.2014 passed by the Assistant Commissioner of Labour - 2, Chennai made in PG.No.02/2012.

2. The second respondent is a workman under the Writ Petitioner-Management and retired from service. The Dearness Allowance has been increased in this regard under Government Order issued in January 2010 granting retrospective effect. In order to claim the benefit of Dearness Allowance with retrospective effect, the second respondent/Workman approached the Assistant Commissioner of Labour/Competent Authority by filing P.G.No.2 of 2012. The first respondent issued an award on 21.04.2014 granting the difference amount of gratuity and other benefits.

2. The similar facts and the circumstances of this case were considered by this Court in a batch of writ petitions in W.P.Nos.20116 to 20122 of 2014 and a final order was passed on 22.12.2015 by rejecting the contentions of the petitioner-Management and a direction was issued to revise the Dearness Allowance as applicable from the date of the Government Order and not with

retrospective effect. While dealing with those cases, the learned single Judge of this Court after elaborately discussing about various Government Orders, in this regard, in respect of Dearness Allowance with retrospective effect, which was made applicable to the pensioners and family pensioners and consequent upon such revision in the rates of Dearness Allowance the revision of pension was granted. Paragraph Nos.13 and 14 of the said order dated 22.12.2015 is extracted herein.

"13. This submission is totally flawed, since Dearness Allowance increased not only to the serving employees, but to pensioners and the family pensioners. This is evident from the Government Orders produced by the petitioner Management in illustration, if we see G.O.Ms.No.100, Finance (Education Department), dated 30.11.2011, the Government has issued orders sanctioning additional Dearness Allowance to pensioners and family pensioners with effect from 01.01.2011 (retrospective effect). Similarly G.O.Ms.No.280, dated 07.10.2011, with effect from 01.07.2011, the Government letter Ms.No.108, dated 06.06.2012, enhancing the Dearness Allowance with retrospective effect from 01.01.2012 to all employees of State Transport undertakings; similar is the G.O.Ms.No.249, dated 27.12.2013, enhancing the Dearness Allowance to employees of State Transport Undertakings from 80% to 90% with retrospective

effect from 01.07.2013; G.O.Ms.No.55, dated 04.06.2014, enhancing the Dearness Allowance to the employees of the State Transport Undertakings from 90% to 100% with retrospective effect from 01.01.2014; G.O.Ms.No.245, dated 10.10.2015, revising 107% which was made applicable to the employees or the State Transport Undertakings with retrospective effect from 01.07.2014 vide G.O.Ms.No.147, dated 30.12.2014; G.O.Ms.No.121, dated 22.04.2015, increasing Dearness Allowance to 113%. Thus, it is clear that whenever the Government revises the Dearness Allowance with retrospective effect, it is made applicable to pensioners and family pensioners. Consequent upon such revision in the rates of Dearness Allowance results in revision of pension. While computing gratuity, Dearness Allowance is one of the components to be taken into consideration. Therefore, if there has been a retrospective revision in the rates of Dearness Allowance, it goes without saying that such increase to be made applicable for computation of gratuity for the period during which the workmen were in service. This differential amount was sought for by the Workmen and when the Management failed to accede to their genuine demand, they were compelled to file applications for computation before the Controlling Authority. The settled law being that gratuity is *not a bounty, but a reward for past services. Therefore, when there is a revision of Dearness Allowance made retrospectively and on account of the retrospective revision of rates, if the concerned workmen was in services at the relevant point of time, necessarily the gratuity also has to be calculated giving the benefit of the increase in Dearness Allowance. This has been rightly done by the Controlling Authority.*

14. As noticed above before the Controlling Authority, the petitioner Management did not dispute the applicability of the Government Orders revising the Dearness Allowance with retrospective effect. It is stated by the learned counsel for the respondent Workmen that pension payable to the Workmen has been revised. However, the revised Dearness Allowance is yet to be paid to them for which they have been making representations. If the Dearness Allowance has been revised retrospectively by the Government and made applicable to State Transport Undertakings such revised Dearness Allowance has also to be paid to the Workmen concerned. Therefore, there is no error in the manner in which the computation has been done. On a reading of the impugned order, it is clear that the Controlling Authority has computed the amount after conducting enquiry, after considering the stand taken by either party and in particular *the counter filed by the petitioner Management. Therefore, this Court is satisfied that the Controlling Authority has conducted the enquiry in terms of the stipulation contained in Section 7(4)(c) and there is no error in the decision making process".*

3. In view of the findings given by this Court in the earlier writ petitions, the grounds raised in the writ petition cannot be considered and accordingly the writ petitioner is liable to pay the difference in gratuity to the second respondent, as determined by the first respondent, within a period of **six weeks** from the date of receipt of a copy of this Order.

4. Accordingly, the writ petition stands dismissed. However, there is no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

23.08.2017

Index:Yes/No
Internet:Yes/No
rna

To

The Assistant Commissioner of Labour - 2,
D.M.S. Complex,
Teynampet,

Chennai - 600 006.

S.M.SUBRAMANIAM,J

rna

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