IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 27.07.2018

ORDER PRONOUNCED ON : 11.08.2018

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.10999 of 2009
and M.P.Nos.1 and 2 of 2009

C.J.Rosalin Vasanthi ... Petitioner

Vs.

1. The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
No.2, Pallavan Salai, Chennai - 600 002.

2. The Management of
Metropolitan Transport Corporation Ltd.,
No.2, Pallavan House,
Anna Salai, Chennai - 600 002.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records relating to the order in letter No.1902/pension/MTC/2008 dated 07.05.2008 of the 2nd respondent and quash the same and consequently, direct the 2nd respondent to refund the recovered amount and to restore the D.A. and Medical Expenses to the petitioner from April, 2008.

For Petitioner : Mr.S.T.Varadarajulu

For 2nd Respondent : Mr.B.Elango

For 1st Respondent : No appearance

O R D E R

The Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order in letter No.1902/pension/MTC/2008 dated 07.05.2008 passed by the Metropolitan Transport Corporation/2nd respondent herein and quash the same and for a direction to pay Dearness Allowances with Medical Expenses to the petitioner for the service rendered with Metropolitan Transport Corporation.

2. The petitioner was serving with Metropolitan Transport Corporation Ltd., and she retired from service on 30.09.2007 after completing 39 years of service. She was getting pension being a State Government employee. The petitioner's husband Mr.S.C.Joseph passed away, and from 15.08.1996, the petitioner was getting family pension, which she was entitled to on the death of her husband. The State Government has passed an order in G.O.Ms.No.191, Finance (Pension) Department, dated 16.03.1996, by which, the Government had ordered to suspend Dearness Allowance on family pension, if a family pensioner is employed in State or Central Government or a Government Undertaking or a Corporation or an Autonomous Body or a Local Fund in a post. The said G.O. also ordered the Dearness Allowance on family pension shall be suspended with effect from 16.03.1996 i.e., date of G.O. to the Family Pensioners, who are already employed prior to the issuance of the G.O. and continued to be on employed on the date of the Government order.

3. The Government of Tamil Nadu passed another order being G.O.Ms.No.112, Finance (Pension) Department dated 24.03.2008, where after recording the effect of G.O.Ms.No.191, it has been stated as under:-

> 3. Government after considering the above order of Government of India has decided to allow Dearness Family Pension wherever admissible and Dearness Allowance on family pension in the case of employed family pensioners. Accordingly, Government direct that Dearness Family Pension at the rate of 50% of Family Pension and Dearness Allowance on family pension including Dearness Family Pension wherever admissible shall be paid to all the employed family pensioners in State or Central Government or a Government Undertaking or a Corporation or an Autonomous Body or a Local Fund in a post on fixed pay or on time scale of pay where Dearness Allowance on pay is allowed.

4. The petitioner received the impugned order from the respondent on 07.05.2008 stating that she is not entitled to two Dearness Allowances, since she is receiving Dearness Allowance on her behalf and on behalf of her husband, and that the Dearness Allowance received by her to the tune of Rs.9,810/- would be recovered from her. Challenging the order dated 07.05.2008, the instant Writ Petition has been filed.

5. Heard the learned counsel appearing for the petitioner and the respondent.

6. It is pertinent to mention at this juncture that after 07.05.2008, the petitioner has not been paid the Dearness Allowance and Medical Expenses. The petitioner has given a representation on 27.08.2008. There is no material on record, which indicates that the representation has been disposed of.

7. The learned counsel appearing for the petitioner would contend that under G.O.Ms.No.112, the relevant portion of which, has been extracted in the foregoing paragraph, the Government had decided the Dearness Allowance on family pension at the rate of 50% would be paid to all the employed Family Pensioners in the State Government. He further contended that assuming but not admitting the petitioner is not entitled to two Dearness Allowances, only the Dearness Allowance component of the family pension, which has been received by her on the death of her husband alone can be taken away, and her Dearness Allowance and Medial Expenses cannot be taken away.

8. On behalf of the respondents, it was contended that G.O.Ms.No.112 does not permit payment of two Dearness Allowances to one person and the claim of the petitioner cannot be accepted.

9. A perusal of G.O.Ms.No.112, dated 24.03.2008 shows that the Government had permitted Dearness relief at the rate of 50% to be paid to all employed family pensioners. The petitioner was therefore, entitled to family pension and Dearness Allowance on her retirement and at the same time, she is also entitled to family pension, which is payable to her on the death of her husband, who was employed in the State Government.

10. Rule 20(A) of the Tamil Nadu State Transport Corporation Pension Fund Rules reads as under:-

> Dearness Allowance to Pensioners: On addition to the basis pension, the pensioners are eligible for nominal dearness at the rates that may be determined by the Government of Tamil Nadu.

11. The Dearness Allowance component of the pensionary benefit given to the petitioner can never be taken away from her. She is entitled to it under Rule 20(A) of Tamil Nadu State Transport Corporation Pension Fund Rules. The question is as to whether under G.O.Ms.No.112, she would also be entitled to Dearness Allowance on the family pension which, she is entitled to get on her death of her husband.

12. A reading of G.O.Ms.No.112 does not bar payment of Dearness Relief on family pension payable to pensioners, who have retired from State Government or Central Government or other instrumental bodies of State. G.O.Ms.No.112 specifies that

50% of the Family Pension and Dearness Allowance on family pension,wherever admissible will be paid to all the employed family pensioners in State or Central Government or a Government Undertaking or a Corporation or an Autonomous Body or a Local Fund in a post on fixed pay or on time scale of pay where Dearness Allowance on pay are allowed.

13. There is no justification in stopping the Dearness Allowance, which was paid to the petitioner on her retirement or the Dearness Allowance component of the family pension, which the petitioner is entitled to death on her husband.

14. With the above terms, this Writ Petition is allowed and the order passed by the 2nd respondent in letter No.1902/pension/MTC/2008 dated 07.05.2008 is set aside. The stay granted by this Court is made absolute. The recovery is any made from the petitioner shall return back forthwith with interest at the rate of 6% within a period of four(4) weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Administrator,
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No.2, Pallavan Salai, Chennai - 600 002.

2. The Management of
Metropolitan Transport Corporation Ltd.,
No.2, Pallavan House,
Anna Salai, Chennai - 600 002.

+1cc to Mr.S.T.Varadarajulu, Advocate, S.R.No.55505

+1cc to Mr.M.Chidambaram, Advocate, S.R.No.55396

W.P.No.10999 of 2009
and M.P.Nos.1 and 2 of 2009

GSP(30/08/2018)