BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A(MD)Nos.81 to 84 of 2018
and
C.M.P(MD)Nos.373 to 376 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Bye-pass Road,
Madurai - 625 016. ... Appellant in all W.As

Vs.

1.C.Thangamani ...Respondent in W.A.(MD)No.81 of 2018
2.A.Thirugnanam ...Respondent in W.A.(MD)No.82 of 2018
3 K.R.Chandrasekaran ...Respondent in W.A.(MD)No.83 of 2018
4.S.Sheik Sardar ...Respondent in W.A.(MD)No.84 of 2018

Common Prayer: Writ Appeals filed under Clause 15 of Letters Patent, to set aside the common order dated 27.03.2014 made in W.P.(MD). No.14991, 15353/2012, 1145 and 2716 of 2013 respectively, on the file of this Court.

Prayer in WP(MD)No.14991/2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to pay a sum of Rs. 33,086/- being the difference amount of unavailed earned leave salary between the unavailed earned leave salary paid based on the pre revised scale and the unavailed earned leave salary payable based on the revised scale along with 18% interest to the petitioner.

Prayer in WP(MD)No.15353/2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to pay a sum of Rs.70,364/- being the difference amount of encashment of earned leave between the encashment of earned leave paid based on the pre-revised scale and the encashment of earned leave payable based on the revised scale along with 18% interest to the Petitioner.

Prayer in WP(MD)No.1145/2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of mandamus or any other appropriate writ or orders or direction in nature of writ directing the respondent to pay a sum of Rs.89,449/- being the difference amount of encashment of earned leave between the encashment of earned leave paid based on the prerevised scale and the encashment of earned leave payable based on the revised scale along with 18% interest to the petitioner.

Prayer in WP(MD)No.2716/2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to pay the difference amount of encashment of earned leave between the encashment of earned leave paid based on the pre-revised scale and the encashment of earned leave payable based on the revised scale along with 18% interest to the petitioner.

For Appellant : Mr.A.P.Muthupandian
(in all W.As)
For Respondent : Mr.G.Venkataraman
(in W.A.(MD)No.81 of 2018)
For Respondent : Mr.C.Thangamani for R1
(in W.A.(MD)Nos.82 to 84 of 2018)

COMMON ORDER

[Judgment of the Court was delivered by N.KIRUBAKARAN,J]

The Writ Appeals have been preferred by the Transport Corporation against the common order dated 27.03.2014, passed by the learned Single Judge granting the relief sought for by the respondents, namely, to direct the Transport Corporation to pay the difference amount of enhancement of earned leave paid based on the pre-revised scale and enhancement of earned leave payable based on the revised scale along with interest at 18% per annum.

2.The respondents are retired officers of the appellant Transport Corporation. Based on the Pay Commission's recommendations the Government revised the scale of pay and allowances of the State Government employees with effect from 01.01.2006. Thereafter, orders were issued for extending the revised pay scale and allowances to the employees of the Transport Corporation depending upon the financial position of the Corporation. Subsequently, a clarification has been issued stating that the employees who retired between 01.01.2006 to 31.05.2009 are entitled to notional pay fixation in the revised scale of pay. The undrawn pay would be reckoned for sanctioning the pensionary benefits subsequent to the implementation of revised pay scale. Therefore, difference amount of enhancement of earned leave / unearned leave in respect of the retired officers from 01.01.2006 to 31.05.2009 could be disbursed in three equal installments as per the Government order.

3.Based on the clarification dated 26.06.2009, issued by the Principal Secretary to Finance Department, the learned Single Judge specifically found that the Government had already made it clear as to what has to be done in the case of earned leave. Based on the clarification, the learned Single Judge found that the respondents/writ petitioners are entitled to receive the difference amount of enhancement of earned leave pursuant to the revision of scale of pay. Though the applicability of revision of pay scale depends upon the financial position of the Transport Corporation as per the G.O.Ms.No.250 Finance (BPE) Department dated 17.06.2009, the learned Single Judge took note of the fact that the pay scale revision has already been applied to the appellant Corporation by passing G.O.Ms.No.63 Transport (D) Department, dated 05.02.2010 and granted the relief that they are entitled to the difference amount of enhancement of earned leave paid based on the pre-revised scale and enhancement of earned leave payable based on the revised scale. Therefore, the order of the learned Single Judge is based on the clarification issued by the Principal Secretary to Finance Department dated 26.06.2009 and also the application of revised pay scale as per G.O.Ms.No.63 Transport (D) Department, dated 05.02.2010. Therefore, the order of the leaned Single Judge is based on the reasons and based on the Government orders and clarification and the same cannot be interfered with.

4.In view of the above, these Writ Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

<u>For passing further orders:</u>

5.It is not for the first time the issue is raised before this Court. As rightly pointed out by the learned counsel for the respondent that the issue was already settled in W.A.(MD)No.716 and 718 of 2017 and the contention of the appellant has been negatived. Subsequently, the very same issue was again raised in W.A.(MD) No.1423 of 2016 and the issue raised by the appellant was also negatived on 25.10.2017. It is not clear as to why the appellant again and again preferred petitions for the very same issue, which was already rejected consistently by this Court. Something is wrong either with the legal department or with the Corporation. Filing of appeal for the very same settled issue is abuse of process of law. The appellant itself suffered orders regularly on the very same prayer / issue. When such is the position, this Court would like to know who has advised to file the appeal and who has granted permission to file the appeal. It is not as if the appellant can mechanically file the appeal against each and every order against the settled position of law. It is not only be the abuse of process of law but also an attempt to increase the pendency of the cases before this Court. That apart, it would also cause financial loss to the Corporation which is already under the severe finical crisis. All those who are responsible for this unnecessary litigation have to be proceeded with. Therefore, the Managing Director, Tamilnadu State Transport Corporation Madurai Limited, Madurai and the Chief Financial Officer of the Corporation are directed to appear before this Court on 23.01.2018 to answer the queries raised before this Court.

6.The entire case records have to be produced by the concerned officials.

Sd/-
Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

1 The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Bye-Pass Road, Madurai-625 016.

2 The Chief Financial Officer,
Tamil Nadu State Transport Corporation Ltd.,
Bye-Pass Road, Madurai-625 016.

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and
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