IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2019

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THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition No.12729 of 2015
and MP.Nos.1 & 2 of 2015

Bhaarathiya Electricity Employees Federation,
(Reg.990/SLM, (Affiliated with BMS in TN 100),
Represented by its State Executive President,
Mr.R.Muralikrishnan,
177, 5th Main Road, Sri Iyyappa Nagar,
Virugampakkam Post,
Chennai - 600 092. ... Petitioner

Vs.

1.The Chairman Cum Managing Director,
Tamilnadu Generation and Distribution
Corporation Limited,
144, Anna Salai,
Chennai - 600 002.

2.The Chief Engineer / Personnel,
Tamilnadu Generation and Distribution
Corporation Limited,
144, Anna Salai,
Chennai - 600 002.

3.The Chief Financial Controller / General,
Tamilnadu Generation and Distribution
Corporation Limited,
144, Anna Salai,
Chennai - 600 002.

4.Tamil Nadu Transmission Corporation Ltd,
(TANTRANSCO)
Rep. by its Managing Director,
No.144, Anna Salai,
Chennai - 600 002.

5. Union of India,
Ministry of Finance,
Department of Revenue,
Central Board of Director Taxes,
Rep. by its Under Secretary ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue Writ of Certiorari, calling for the entire records pursuant to the Circular No.17/2014 in F.No.275/192/2014-IT(B) dated 10.12.2014 on the file of the 5th respondent and the consequential Circular LR.No.CFC/TANGEDCO/FC/ACCTS/DFC/BS/IT/F.20B/D.No.154/2014 dated 12.12.2014 on the file of the 3rd respondent and to quash the same.

For Petitioner : Mr.A.Deivasigamani for
Mr.G.B.Saravana Bhavan
For Respondents : Mr.Karthik Rajan,
Senior Standing counsel for R1 to R4
: M/s.Hema Muralikrishnan
Senior Standing Counsel for R5

ORDER

Heard the learned counsel for the petitioner, the learned Senior Standing counsel for the 1st to 4th respondents and the learned Senior Standing counsel for the 5th respondent Income Tax Department.

2.In the above Writ Petition, the petitioner has challenged the impugned circular dated 10.12.2014 bearing reference No.17/2014 in F.No.275/192/2014-IT(B) issued by the 5th respondent Income Tax Department and consequential impugned circular dated 12.12.2014 bearing reference Lr.No.CFC/TANGEDCO/FC/ACCTS /DFC/BS/IT/F.20B/D.No.154/2014 issued by the 3rd respondent.

3.Petitioner is a federation representing interest of the employees of the erstwhile the Tamil Nadu Electricity Board. Pursuant to enactment of Electricity Act, 2003. the then existing Tamil Nadu Electricity Board was trifurcated into three separate corporations. The Government of Tamil Nadu issued G.O.Ms.100 dated 19.10.2010 to implement the above requirement by approving the transfer.

4.As per second proviso to Section 144 of the Electricity Act, 2003, the terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to the employees if there had been no such transfer scheme. Further, under the Transfer Scheme 2010 dated 19.10.2010, in paragraph 5.3.4 it has been stated as follows:-

> 5.3.4. Any payment received by an employee of the Central Government or a State Government, as cash-equivalent of the leave salary in respect of the period of earned leave at his credit at the time of his retirement, whether on superannuation or otherwise, is exempt under Section 10(10AA)(i). In the case of other employees, this exemption will be determined with reference to the leave to their credit at the time of retirement on superannuation or otherwise, subject to the maximum of ten months' leave. This exemption will be further limited to the maximum amount specified by the Government of India Notification No.S.O.588(E) dated 31.05.2002 at Rs.3,00,000/- in relation to such employees who retire, whether on superannuation or otherwise, after 01.04.1998.

5.The petitioner has impugned the circular dated 10.12.2014 and the consequential circular dated 12.12.2014 as per which the respondent is required to deduct tax at source from the employees of three corporations which were earlier part of a Tamil Nadu Government and any lapse by Drawing and Disbursing Officer will render such officer liable under the Income Tax Act, 1961.

6.It is submitted that the employees are entitled to pension rules and that they have also been given increase in the salary as per the 5th and 6th pay commissions. It is submitted that though these employees are no longer Government Employees, yet they are treated on par with the Government Employees and there deduction of tax towards the pension contribution by the officers of the 1st to 4th respondent was contrary to Section 10 (10AA)(i) of the Income Tax Act, 1951.

7.After the Electricity Act, 2003 came into force, there has been no consequential amendment provision to the Income Tax Act, 1951. As per Section 10(10AA)(i) of the Income Tax Act, 1951, only payment received by an employee of the Central Government or a State Governments as a cash equivalent of the leave salary in respect of the period of earned leave at his credit at the time of his retirement whether on superannuation or otherwise is exempted.

8.Since the members of the federation are no longer Government Employees but are employees of separate corporation pursuant to Electricity Act, 2003, they can no longer be treated on par with the Government Employees. Therefore, the exemptions under Section 10(10AA)(i) of the Income Tax Act, 1951 cannot be applied to them.

9.Therefore, I do not find any reasons to interfere with the impugned order. Under these circumstances, this Writ Petition is liable to be dismissed and is hereby dismissed. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

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To

1.The Chairman Cum Managing Director,
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Rep. by its Managing Director,
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5. The Under Secretary
Union of India,
Ministry of Finance,
Department of Revenue,
Central Board of Director Taxes,

+1cc to M/s.G.B.SAravanabhavan, Advocate, SR.No.105892.
+1cc to Mr.Karthick Rajan, Advocate, SR.No.105866.
+1cc to M/s.Hema Muralikrishnan SR.No.105509.

W.P.No.12729 of 2015
and
MP.Nos.1&2 of 2015

SPD(CO)
CSR: 10.03.2020