IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2019

CORAM :

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.20773 of 2017

P.B.Guruvaiah, P.R.No.12645,
Son of Polaiah,
4/10, Mullai Street,
Ponni Nagar, Karampakkam,
Porur, Chennai 600 116. ... Petitioner

Vs.

1.Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Rep. by the Managing Director,
3/137, Salamedu,
Valudha Reddy Post,
Villupuram, 605 602.

2.Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Rep. by the General Manager,
Kancheepuram Region,
Kancheepuram 631 552.

3.The Administrator,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Employees Post Retirement Welfare Fund Scheme,
Thiruvallurvar House, Pallavan Salai,
Chennai 600 002. ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order Lr. No.431/PB12/TNSTC(VPM)/KPM/2017, dated 23.06.2017 on the file of the 2nd respondent herein and quash the same in so far as it relates to "no specific provisions found for enhancement of D.A. to the petitioner" and direct the respondents to settle the retirement benefits payable to the petitioner including Service Gratuity, Pension Commutation amount, Leave Salary, monthly pension and all other attendant retirement benefits by reckoning the value of Dearness Allowance at the rate of 100% as ordered in G.O.No.96, Finance (Allowance) Department, dated 03.04.2014 and consequently to pay the difference of money value for the installments already paid with an interest of 10% per annum from

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the date of the retirement of the petitioner in the light of the judgment of this Court dated 22.12.2015 made in W.P.Nos.20116 to 20122 of 2014, W.P.Nos.33165 to 33178 of 2015 and W.P.No.27015 of 2015.

For Petitioner : Mr.N.Ishak

For Respondents: Mr.K.Kulandaivelu

ORDER

The petitioner is before this Court seeking issuance of writ of certiorarified mandamus, quashing order dated 23.06.2017, passed by the Tamil Nadu State Transport Corporation (Villupuram) Limited and consequently directing the respondents to settle the retirement benefits payable to the petitioner including service gratuity, pension commutation amount, leave salary, monthly pension and all other attendant retirement benefits by reckoning the value of the dearness allowance at the rate of 100% as per G.O.No.96, Finance (Allowance) Department. The petitioner prays for consequential difference of money value for the installments already paid with an interest of 10% per annum from the date of the retirement of the petitioner, relying upon the judgment of this Court dated 22.12.2015 passed in W.P.Nos.20116 to 20122 of 2014, W.P.Nos.33165 to 33178 of 2015 and W.P.Nos.27015 of 2015.

2.Mr.K.Kulandaivelu, learned counsel appearing for the respondents fairly admits that the issue in question stands covered in favour of the employee by the aforesaid orders.

3.Reference was specifically made to the order passed in a batch of Writ Petitions, dealing with an identical challenge as the one before me, by order dated 22.12.2015, as follows:

> "13. This submission is totally flawed, since Dearness Allowance is 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 their typed set of papers. By way of 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

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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 retrospectively the Dearness Allowance to 107% which was made applicable to the employees of 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% and G.O.Ms.No.262, dated 16.10.2015, revising the rate of 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.

...

20. Having held that the impugned orders passed by the Controlling Authority do not suffer from any error, the issue would be as to whether the workmen would be entitled to interest at 10%. The learned counsel for the petitioner Management submitted that the interest

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was payable only at 9% and the order of the Controlling Authority granting 10% interest is not tenable. As rightly pointed out by the learned counsel for the Workmen in terms of the statutory notification, in exercise of the powers conferred under Section 7(3A) of the Act, interest is payable at 10%. In such circumstances, the claim made by the Workmen being one for gratuity which is a payment given to a retired employee for the faithful service rendered and since employees were not extended the benefit on their representation and were compelled to approach the Controlling Authority under the Act and had conducted the proceedings before the Controlling Authority for nearly four years, the award of interest at 10% cannot be termed to be either arbitrary or irrational."

4.As far as interest is concerned, the issue also stands covered by paragraph 20 of the above order, where this Court has granted interest at the rate of 10%.

5.In the light of the aforesaid order the issues raised stand decided in favour of the petitioner and the impugned order is set aside.

6.This Writ Petition is allowed. The petitioner is entitled to the relief claimed that will be computed and paid over to him, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

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Rep. by the Managing Director,
3/137, Salamedu,
Valudha Reddy Post,
Villupuram, 605 602.

2.Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Rep. by the General Manager,
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3.The Administrator,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Employees Post Retirement Welfare Fund Scheme,
Thiruvallurvar House, Pallavan Salai,
Chennai 600 002.

+1cc to Mr.N.IShak, Advocate, S.R.No. 15178

W.P. No.20773 of 2017

SR(CO)
GN(14/03/2019)

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