BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.23379 of 2018
and
W.M.P.(MD).No.21224 of 2018

B.Viswanathan ... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Special Commissioner and
Secretary to Government,
(Transports) Department,
Fort St.George,
Chennai - 9.

2.The Director of Treasuries and Accounts,
Panagal Building, Jennies Road,
Saidapet, Chennai.

3.The Managing Director,
SETC,
Thiruvalluvar House,
Annasalai,
Chennai - 600 002.

4.The Administrator,
TNSTC Employees Pension Fund Trust,
Thiruvalluvar Illam,
Chennai - 600 002.

5.The Assistant Manager,
TNSTC Employees Pension Fund Trust,
SETC(TN) Ltd Corporative Office,
Thiruvalluvar Illam,
Chennai - 600 002.

6.The Account General,
O/o. Account General,
Thenampet, Chennai. ... Respondents

(R-6 is impleaded vide Court Order dated 21.02.2022 in W.M.P.(MD). No.18777 of 2019)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the first respondent dated 26.09.2017 bearing Letter No.2361/TPT/TBC-2/2017 and consequential of order passed by the second respondent dated 03.01.2018 bearing No:P30/2/13004240/LTA and quash the same with regard to withheld amount from 01.07.2006 to 28.05.2015, and direct the respondents to pay the withheld amount for the period from 01.07.2006 to 28.05.2015, pension for the period from 01.07.2006 to 31.03.2008 and consequently direct the respondents to pay the interest for the arrears of pension at the rate of 9% as per the G.O.Ms.No.96 dated 31.07.2015 for the period from 01.01.1998 till the date of release, within the stipulated time fixed by this Court.

For Petitioner	:	Mr.R.Saravanan
For R-1 and R-2	:	Mr.Kameswaran, Government Advocate (Civil Side).
For R-3	:	Mr.K.Sathiyasingh
For R-4 and R-5	:	Mr.A.Swaminathan
For R-6	:	P.Gunasekaran

ORDER

This Writ Petition has been filed to quash the order passed by the first respondent dated 26.09.2017 and the consequential order passed by the second respondent dated 03.01.2018 which has withheld the amount from 01.07.2006 to 28.05.2015 and direct the respondents to pay the withheld amount for the said period with interest of arrears of pension at the rate of 9% as per the G.O.Ms.No.96 dated 31.07.2015.

2. The petitioner's father namely M.Balakumar was employed in the third respondent Corporation at Madurai as Trade Man and he retired from service on 30.06.2006. Originally, he was employed in the said Transport Department on 29.01.1969 and was regularized on 01.02.1970. After the creation of the Transport Corporation, the petitioner's father was absorbed in the Corporation. There is a long history in the absorption of employees in the Corporation service.

3. This Court without going into the history of the case, in a nutshell, the following facts are essential for deciding the issue. Earlier the Government has fixed the cut of date for issuing pension as 14.09.1975. Thereafter, the said cut off date was challenged in various forums. Finally, after the disposal of the SLP, the cut off date was fixed as 31.03.1982. The Government has granted pension for the service rendered in the Transport Department until 31.03.1982. Earlier, for the Corporation services there was no pension. The pension was created by creating Pension Fund Trust from the year 1998. In the intervening period from 1982-1998, the employees did not get the pension. Therefore, the issue was re-agitated and finally it was decided that the Corporation service is a different service and the Government service is a different service and the persons who have rendered in Corporation service are entitled to pension also. It is not amounting to dual pension. The issue was put to challenge before SLP and thereafter, the Review Application was also filed and were dismissed.

4. The Government issued a Letter No.2361/TPt/TBC-2/2017 dated 15.02.2017 wherein it is mentioned life time arrears of pension admissible from time to time as communicated was quantified as under:

> *(a) <u>LIFE TIME ARREAR of Pension admissible</u> from time to time as indicated below:*
>
> *(i) 1.1.1988 @ Rs.235/-p.m. (minimum)*
> *1.4.1988 @ Rs.245/-p.m. (minimum)*
> *1.6.1988 @ Rs.385/-p.m. (minimum)*
> *1.1.1996 to 30.06.2006 (retirement date) @ Rs.1275/-p.m. (minimum)*
>
> *(ii) The arrear of pension and D.A. admissible from time to time to the employee from 01.07.2006 (next day of date of retirement) to 29.05.2012 (Date of death of the deceased employee) have to be withheld as per the orders issued in para 12 of G.O. 4th cited, so as to avoid double payment because the deceased employee has already received pension from the Tamil Nadu State Transport Corporation Employee's Pension Fund Trust for the services rendered both in Tamil Nadu State Transport Department and Transport Corporation for the said period.*
>
> *(b) <u>D.A. on pension:</u>*
> *(i) 1.1.1988 to 30.06.2006 (retirement date) - <u>Not admissible</u>*

(ii) 01.07.2006 (next day of retirement) to 29.05.2012 (date of death of the employee) – to be withheld.

As far as DA pension from 01.07.2006 (next day of date of retirement) to 29.05.2012 (Date of death of the employee) the amount was withheld. Since the Writ Appeal SLP and the Review Application are dismissed. Now the petitioner has come forward with this Writ Petition to release the said amount which has been withheld by the respondents.

5. Therefore, this Court is of the considered opinion since the litigation had ended in favour of the writ petitioner, the first respondent shall direct the second respondent to release the amount who in turn, shall direct the fourth respondent to disburse the amount to the petitioner. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

6. With the above said direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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Represented by its Special Commissioner and
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6.The Account General,
O/o. Account General,
Thenampet, Chennai.

+1 CC to M/s.R.SARAVANAN, Advocate (SR-11462[F] dated 11/03/2022)

+1 CC to M/s.SPL GP (SR-9686[F] dated 03/03/2022)

+1 CC to M/s.T.SATHIYA SINGH, Advocate (SR-11726[F] dated 14/03/2022)

W.P.(MD).No.23379 of 2018
11.03.2022

KG(CO)
KP(04.04.2022) 5P 10C