



WEB COPY



W.P.No.142 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 20.06.2023

ORDERS PRONOUNCED ON : 18.07.2023

CORAM:

THE HONOURABLE Mr.JUSTICE BATTU DEVANAND

W.P.No.142 of 2020

and

W.M.P.No.176 of 2020

1.Tamilnadu Arasu Pokkuvarathu
Kazhaga Ooivu Pettra Poriyalargal
Mattrum Kanganippalargal Nala Sangam,
Rep., by its General Secretary,
Thiru R.Mohan,
61, Pallavan Nagar,
1st Cross Street, 1st Main Road,
Thiruverkadu, Chennai-77.

2.D.Babu

.. Petitioners

Vs.

1.The Principal Secretary,
Transport Department,
Government of Tamilnadu,
Fort St. George, Chennai-600 009.

2.Tamilnadu State Transport Corporations
Employee's Pension Fund Trust,
Rep., by its Administrator,
Pallavan Salai, Chennai-600 002.



W.P.No.142 of 2020

WEB COPY

- 3.The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Salai, Chennai-600 002.
 - 4.The Managing Director,
State Express Transport Corporation (TN) Ltd.,
Thiruvalluvar House, No.2, Pallavan Salai,
Chennai-600 002.
 - 5.The Managing Director,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
3/137, Salamedu, Valudhareddy Post,
Villupuram-605 602.
 - 6.The Managing Director,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
27, Railway Station New Road,
Kumbakonam-612 001.
 - 7.The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
No.12, Ramakrishna Road,
Salem-636 007.
 - 8.The Managing Director,
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
37, Mettupalayam Road,
Coimbatore-641 043.
 - 9.The Managing Director,
Tamil Nadu State Transport Corporation (MDU) Ltd.,
Bye Pass Road, Madurai-625 010.
- .. Respondents



W.P.No.142 of 2020

WEB COPY

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for records pertaining to the order dated 26.08.2019 passed by the first respondent in G.O.Ms.No.142, Trasport (E) Department, quash the same insofar the condition and direction given under paragraph 3(b) freezing the payment of dearness allowance to the petitioners of State Transport Corporation at the same rate of dearness allowance being paid as on the date of the G.O. and consequently direct the respondents to pay dearness allowance to the members of petitioner association, including the second petitioner, for the period from 1.1.2016 up to 31.12.2019, at the rate of dearness allowance already revised for the serving transport employees and Tamil Nadu Government Servants, with arrears and interest at the rate of 12% per annum and to continue to pay the petitioners members, including the second petitioner, at the same rates of dearness allowance on part with and as applicable to the serving transport employees and the Tamil Nadu Government Servants and as revised from time to time for every 6 months for the period from 1.1.2020 and thereafter, award costs.

For Petitioner	:	Mr.R.Krishnasamy
For R1	:	Mr.G.Nanmaran Special Government Pleader
For R2	:	Mr.C.S.K.Sathish Standing Counsel



W.P.No.142 of 2020

For R3 : Mr.R.Balaji
For R4 : Mr.L.S.M.Hasan Fikal
For R5 : Mr.Aswin
For R6 : Mr.C.Senapathi
For R7 : Mr.R.Babu
For R8 : Mr.A.Sundaravadhanan
Respondent-9 : Served

ORDER

The present writ petition is filed seeking to quash G.O.Ms.No.142, Transport (E) Department, dated 26.08.2019 issued by the first respondent, insofar as the condition and direction given under paragraph 3(b) freezing the payment of Dearness Allowance to the pensioners of State Transport Corporation at the same rate of Dearness Allowance being paid as on the date of the said Government Order is concerned and for a consequential direction to the respondents to pay Dearness Allowance to the members of the petitioner-Association including the second petitioner for the period from 01.01.2016 to 31.12.2019 at the



W.P.No.142 of 2020

WEB COPY

rate of Dearness Allowance already revised for the serving transport employees and Tamil Nadu Government servants with arrears and interest at the rate of 12% per annum and to continue to pay the same to the members of the first petitioner including the second petitioner at the rate of Dearness Allowance on par with and as applicable to the serving transport employees.

2. During the course of hearing, learned counsel for the petitioner and the learned counsels for the respondents fairly submitted that the issue raised in this writ petition was already decided by an order dated 02.03.2023 in W.P.(MD) No.1147 of 2020 and batch before the Madurai Bench of Madras High Court and placed a copy of the said order before this Court.

3. The relevant portion of the said order is extracted herein under:

“17. The issue arises in the present writ petitions is whether the State Government is right in issuing G.O.(Ms)No.142, Transport (E) Department, dated 26.08.2019, for extension of monetary benefits as per the



WEB COPY



W.P.No.142 of 2020

recommendation of the 7th Pay Commission, prospectively and whether G.O(Ms)No.142, dated 26.08.2019, is overriding the Tamil Nadu State Transport Corporation Employees Pension Fund Rules. For better appreciation, Rules 15, 16 and 20(A) reads as follows:

*“15.DETERMINATION OF PENSIONABLE
SALARY*

a) Pensionable salary shall be the last drawn basic pay.

b) The actual Basic Pay includes Personal Pay.

16.MONTHLY MEMBER'S PENSION

a) A Member shall be entitled to -

i) Superannuation Pension, if he has rendered a qualifying service of 10 years or more and retires on attaining the age of 58 years or the retirement age that may be fixed by the employer.

ii) Voluntary Retirement: Pension, if has rendered a qualifying service of 20 years or more and attained the age of 50 years.

b) In the case of exit of an employee, the amount of monthly superannuation pension or retiring pension, as the case may be, shall be computed in accordance with the following



WEB COPY



W.P.No.142 of 2020

formula namely:

Monthly Member's Pension – Pensionable salary (50 % of last drawn basic pay)X Pensionable Service**/30*

** Basic Pay includes Personal Pay*

***The Pensionable service shall be restricted to 30 years.*

c) Except as otherwise expressly provided hereinafter the monthly members pension under subparagraph (b) mentioned above shall be payable from the date immediately following the date of completion of 58 years of age notwithstanding that the member has retired or ceased to be in the employment. The application for pension shall be submitted in the format prescribed by the Trust.

d) The member's pension is payable till the lifetime of the member.

e) Forfeiture of Service on Resignation:

Resignation from service or post entails forfeiture of past services.

Provided that a resignation shall not entail forfeiture of past service, if it has been submitted to take up proper permission, another appointment,



WEB COPY



W.P.No.142 of 2020

under Government Department/State Public Sector Undertaking/Board. In such case, the pensionary benefits shall be transferred to the new employer's pension fund/EP scheme 1995, as the case may be, and such benefits shall not be directly paid to the individual.

f) In the case of existing members who have drawn non-refundable advance before the implementation of this Scheme, out of the employer contribution, shall repay along with interest at the rate of 12% compounded annually for the credit balances available in the Provident Fund Trust for the members from time to time. Only after such remittance, the member shall be entitled for the pensionary benefits admissible under this Scheme. Otherwise, the pensionary benefits will be proportionately reduced.

g) In the case of non-member of the FPS-1971, the 1 1/6% of the wages which otherwise would have been remitted to PF Commissioner shall also be remitted by PF Trust to Pension Fund Trust with interest accrued thereon. Otherwise pensionary benefits shall be proportionately reduced.



WEB COPY



W.P.No.142 of 2020

20.A DEARNESS ALLOWANCE TO PENSIONERS *In addition to the basic pension, the pensioners are eligible for nominal Dearness Allowance at the rates that may be determined by the Government of Tamil Nadu.”*

18. *In the present case, admittedly, for implementation of the 7th Pay Commission to the Transport Corporation employees, a Committee was constituted in terms of G.O.(Rt) No.32, Transport (E) Department, dated 12.02.2019 and the Committee examined various issues and submitted a report to the Government. The Committee recommended to implement the 13th Wage Settlement in respect of those who have retired from 01.09.2016 to 31.12.2017 and also to implement the 7th Pay Commission to the Transport Corporation Employees, who have retired during 01.01.2016 to 31.03.2018. The State Government accepted the recommendation of the Committee and decided to implement the same. However, vide the impugned G.O., it is ordered to implement the revision of pension to the pensioners, who are covered under 13th Wage Settlement(for those who have retired between 01.09.2016 and 31.12.2017) with notional effect from 01.09.2016 and with monetary benefit prospectively. Further, it is ordered to implement the revision of pension*



WEB COPY



W.P.No.142 of 2020

as per 7th Pay Commission to the pensioners (for those who have retired between 01.01.2016 and 31.03.2018) with notional effect from 01.01.2016 and with monetary benefit prospectively and it is recommended to continue to pay the dearness allowance at the present rate without any change. However, it is contrary to the Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules.

19. Further, a Government Order cannot overrule the Rules, when the Rules says that the employees entitled to the benefits immediately after retirement, the employees worked in the respondent Transport Corporation, who have retired between 01.09.2016 and 31.12.2017, are entitled to receive revised monetary benefits from the date on which the revised monetary benefits were given to the working employees under the 13th Wage Settlement. Further, the employees who have retired between 01.01.2016 and 31.03.2018 are entitled to receive the revised monetary benefits from the date on which the revised monetary benefits were given to the working employees as per 7th Pay Commission. Hence, to that extent, the impugned G.O., is modified. Further, with regard to dearness allowance, the retired employees are entitled to the percentage of dearness allowances as fixed



W.P.No.142 of 2020

by the State Government to the in-service employees. The respondents are directed to calculate the arrears of pension payable to the petitioners and settle the entire benefit, within a period of twelve weeks from the date of receipt of a copy of this order.”

4. In the considered opinion of this Court, the order cited *supra* is squarely applicable to the present case. Accordingly, this Writ Petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

18.07.2023

Note: Issue order copy on 21.07.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

abr

To

The Principal Secretary to Government,
Transport Department,
State of Tamilnadu,
Fort St. George, Chennai-600 009.



WEB COPY



W.P.No.142 of 2020

BATTU DEVANAND, J.

abr

Order made in
W.P.No.142 of 2020

Dated : 18.07.2023