IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2022

DELIVERED ON : 02.01.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.Nos.14395 of 2010
to 14403 of 2010

W.P.No.14395 of 2010:-
P.Sami Asari ... Petitioner

Vs.

1.State of Tamil Nadu
Rep. By the Special Secretary to Government
Finance (BPE) Department
Secretariat, Chennai-9

2.The State of Tamil Nadu
Rep. By its Principal Secretary to Government
Transport Department
Secretariat, Chennai-9

3.The Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Rep. By its Managing Director
Bye Pass Road,
Madurai-625 010

4. The General Manager
Tamil Nadu State Transport Corporation
(Madurai Division -III)
Ranithottam, Nagercoil-629 001

5.The Tamil Nadu State Transport Corporation
Pension Fund Trust, Rep. By the Administrator
Rep. By the Administrtor
Thiruvalluvar House
Pallavan Salai, Chennai-600 002
(R5 impleaded as per order dated 10/2/2020
made in WMP.No.3701 of 2020 in
W.P.No.14395 of 2010)

..Respondents

PRAYER in W.P.No.14395 of 2010 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records in connection with the impugned orders issued in G.O.Ms.No.250, Finance (BPE) Department dated 17.06.2009 the first respondent and G.O.Ms.No.63 Transport (D) Department dated 05.02.2010 of the second respondent and quash the same to the limited extent of date of effect of the revision of Pay Scales in pursuance of VI Pay Commission recommendations and to issue consequential directions to the respondents herein to extend the benefits of revision of Scale of pay flowing out of VI Pay Commission as issued by the first respondent in G.O.Ms.No.234, Finance (PC) Department dated 01.06.2009 and to consequentially revise the scale of pay of the petitioner with effect from 01.01.2008 and to refix the pensionary benefits and to grant all consequential monetary benefits w.e.f. 01.01.2008 along with the interest on the delayed payment and to grant such other further relief.

For Petitioner	:	Mr.M.Ravi in all WPs.
For Respondents	:	Mr.V.Ravi, Spl.Govt.Pleader for R1 and R2. Mr.C.S.K.Sathish, Standing counsel for R3 and R5. Mr.Ramanlal, Addl Advocate General Assisted by Mr.A.Sundaravadanan for R4.

COMMON ORDER

The above writ petitions are filed challenging the impugned order issued in G.O.Ms.No.250 Finance (BPE) Department dated 17.06.2009 of the first respondent and GO.Ms.No.63, Transport (D) Department dated 05.02.2010 of the second respondent and seeks to quash the same to the limited extent of date of effect of the revision of Pay Scales in pursuance of VI Pay Commission recommendations and to issue consequential directions to the respondents herein to extend the benefits of revision of Scale of Pay flowing out of VI Pay Commission as issued by the first respondent in G.O.Ms.No.234 Finance (PC) Department dated

01.06.2009 and to consequentially revise the Scale of Pay of the petitioner with effect from 01.01.2008 and to refix the pensionary benefits and to grant all consequential monetary benefits w.e.f.01.01.2008 along with the interest on the delayed payment and to grant such other further reliefs.

2. Petitioners were working in the 3rd respondent Corporation and belonged to Administrative Supervisory Category. According to the petitioners, they were not covered under the Wage Settlement and they represented for revision of their Scales of pay on par with the State Government employees. Thereupon, V Pay recommendation benefits were given to the petitioners.

3. The Government issued G.O.Ms.No.234 Finance (Pay Cell) dated 01.06.2009 The Tamil Nadu Revised Scales of Pay Rules, 2009. In pursuance of the said Government Order, the benefits of the revised Scale of pay as per the VI Pay Commission were granted to all the Government Employees notionally with effect from 01.01.2006 and with monetary benefits from 01.01.2007.

4. According to the petitioners, they have been granted the benefits of VI Pay Commission w.e.f.01.01.2008, but the Government Employees had been given the benefits w.e.f.01.01.2007 itself.

5. G.O.Ms.No.250 Finance (BPE) Department dated 17.06.2009 states that the revised scale of pay as per Government Order G.O.Ms.No.234 Finance (PC) Department dated 01.06.2009 will take effect from the date of issue of the said G.O., dated 17.06.2009. The grievance of the petitioners is that the benefits of G.O.Ms.No.234 Finance (PC) Department dated 01.06.2009 has not been extended to them with effect from 01.01.2008 and therefore, they have been exposed to irreparable loss.

6. It is the contention of the petitioners that they were treated on par with the Government Employees with regard to grant of revision of Scale of Pay w.e.f. 01.01.2008 and hence they have to be extended the benefits w.e.f. 01.01.2008.

7. It is the specific contention of the petitioners that by depriving the benefits of revision of pay, those who retired from service on attaining the age of superannuation between 01.01.2008 and 17.06.2009 sought to be permanently deprived of the benefits of the VI Pay Commission recommendations.

8. According to the learned counsel for the petitioners, the act of the respondents is violative of Article 14 of the Constitution of India.

9. The petitioners would submit that the impugned Government Order is liable to be set aside and the petitioners are entitled to the benefits of VI Pay Commission recommendations as per G.O.Ms.No.234 Finance (PC) Department dated 01.06.2009 w.e.f. 01.01.2008 with all arrears.

10. The stand of the respondents as submitted in the counter affidavit is that Pay and allowance announced in the VI Pay Commission

have been paid to those Technical/Administrative Supervisors who were on the rolls on 17.06.2009. Although the petitioners were covered under the VI Pay Commission which came into effect from 01.01.2008, the petitioners retired from service prior to the date of implementation of the VI Pay Commission. The pensioners who have retired between 01.01.2008 till 17.06.2009 turned out to be a separate class of pensioners, as they retired prior to the introduction of the VI Pay Commission recommendation of enhancement of pay scale. As per the G.O.(Ms).No.127 Transport (E) Department dated 13.11.2015, the TNSTC Employees Pension Fund Trust revised the Pension. But as per the formula, the revised Pension got reduced as per the G.O., from the existing. Hence the retired employees welfare association filed a Writ Petition before this court in W.P.No.5342 of 2016 and the same is pending and the operation of G.O.Ms.No.127 is also stayed.

11. It is further submitted that the Pension Fund Trust is fully dependent on the payment of contribution from the Transport Corporation. At present, the Pension Trust is not viable as per the actuarial

reports given by the Actuary. Due to financial crisis of all Transport Corporations, the Transport Corporations are not paying adequate management provident fund contribution to meet the full requirement of the TNSTC Employees' Pension Fund Trust regularly. The Pension Trust is struggling in disbursement of the monthly pension to the pensioners every month. The Pension Trust is having liability of Rs.22,719.44 crores as per the Actuary Certificate with the result there is no money left for payment of commutation which is nearly Rs.250.65 crores.

12. It is further stated that the petitioners pension has been revised as per G.O.(Ms.).No.142 from June 2019. Now the petitioners pension have raised by around Rs.2200/- per month.

13. The learned Standing counsel for respondents would rely on the decision of the Honourable Supreme Court reported in ***(2007) 8 Supreme Court Cases 231 [Chairman & MD.Kerala SRTC Vs. K.O.Varghese and others]*** and submitted that the Supreme Court accepting the stand taken by KSRTC that its financial position is unsound, held that the decision

taken by the State Government not to implement the recommendation of the Fifty Pay Commission for KSRTC and the decision based on it by KSRTC are fully justified.

14. The learned counsel for the petitioners would drew my attention to the order of this court dated 22.04.2022 passed in W.P.Nos.21348, 12730 and 35085 of 2019 etc batch.

15. In the above referred to order dated 22.04.2022, this court in paragraph No.98 and 104, held as follows:-

> "98. The act of the respondent in differentiating between the Staffs who retired between 01.01.2016 and 31.03.2018 is again arbitrary and violation of Article 14,16,21 of Indian Constitution. As per the decision of the Supreme Court in B.J Akkra vs Government of India, (2006) 11 SCC 709, similar discriminations in the introduction of a benefit retrospectively or prospectively by fixing a cut-off date arbitrarily thereby driving a single homogenous class of petitioners into two groups and subjecting them to different treatment was held impermissible.

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104. Having extended the benefits to other class of pensioners and considering the fact that the pension of those pensioners is also borne by the State Government, there is no justification for discriminating between the pensioners those who retired prior to 01.01.2016. Further, the State Transport Undertakings were part of the State Transport Department. Various Transport Departments were hived off into the separate State Transport Undertakings. There was a tacit understanding that the salaries and pension of these employees and pensioners would be protected on par with their counterparts in Government Services. Therefore, there is no basis for discriminating between the employees of the State Transport Undertakings who have retired earlier."

16. It is the core contention of the learned counsel for the petitioners that the impugned Government orders are liable to be set aside to the limited extent of effective date and the petitioners are entitled to the benefits of VI Pay Commission recommendation as per G.O.Ms.No.234 Finance (PC) Department dated 01/06/2009 with effect from 01/01/2008 with all arrears.

17. As held by this court in the order of this court dated 22.04.2022 passed in W.P.Nos.21348, 12730 and 35085 of 2019 etc batch., there is no rational basis to discriminate between the persons who belong to same class of employees. The benefit of G.O.(Ms).No.250 Finance (BPE) Department dated 17.06.2009 has to be extended uniformly and that with effect from 01.01.2008 since the Government had decided to grant revision of pay to the Technical and Administrative Supervisors of the State Transport Corporation on par with the Government Employees on all aspects w.e.f. 01.01.2008.

18. The issue urged before this court is that fixing of a cut off date by the Government Order in G.O.Ms.No.250 Finance (BPE) Department dated 17.06.2009, whereby, in Para 2 (ix) it is stated that the revised scale of pay as per G.O., second read above will take effect from the date of issue of this order. The Transport Department also by its G.O.(Ms.).No.63 dated 05.02.2010 in para 2, mentioned that as regards the Technical/Administrative Supervisory Cadre officers in the State

Transport Undertakings, the revision of scales of pay and allowances has been ordered to take effect from 17.06.2009 in G.O.Ms.No.250 Finance (BPE) Department dated 17.06.2009.

19. The learned counsel for the petitioners also brought to the attention of this court to the order of this court dated 18.11.2013 in W.P.Nos.10867 and 11572 of 2013 wherein, this court held as under:-

> " 7. It is pertinent to note here that the said benefit has already been extended to the pensioners, who were retired on or after 01.1.2006, which is evident from the Government Letter (Ms) No.206, Transport (D) Department, Secretary to Government Administrator, TNSTC Employees Pension Fund Trust, dated 25.8.2010.
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> 8. The grievance of the petitioners is that though the Government extended the benefit to the petitioners as ordered in G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.6.2009 and Letter (Ms) No.194, Transport (D) Department, dated 11.8.2010 issued by the Government of Tamil Nadu, the respondent has not implemented the same to the petitioners.
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> 9. Since the Government have already accepted the request made by the petitioners, it is not fair on the respondent to keep the matter pending. Further, the said

benefit has already been given to the person, who were retired subsequent to 01.1.2006. Therefore, the respondent is directed to implement the revised pension extended to existing pre~2006 pensioners as ordered in G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.6.2009 and Letter (Ms) No.194, Transport (D) Department, dated 11. 8.2010 issued by the Government of Tamil Nadu, and pay the revised pension payable to the petitioners in terms of those Government Orders within a period of four weeks from the date of receipt of a copy of this order. The respondent is also directed to settle the entire arrears within a period of eight weeks thereafter. Since the respondent has not implemented the benefit to the petitioners even after the issuance of Government Letter (Ms) No.194, Transport (D) Department, dated 11.8.2010, the petitioners are entitled to get Rs.10,000/~ each towards costs. However, considering the circumstances of the case, this Court is not imposing costs."

20. The above decision of the learned Single Judge was challenged in W.A.Nos.399 and 400 of 2014. The Writ Appeals were dismissed vide order dated 05.08.2014. The Division Bench confirmed the orders of the Single Judge by observing that it was discriminatory to introduce a

benefit retrospectively fixing a cut off date arbitrarily, thereby, dividing a single class of pensioners into two groups. When an additional benefit was given to similarly placed persons, the same cannot be denied by creating an artificial cut-off date.

21. In the light of the above reasonings, this court is of the view that there is no justification in confining the benefit to one section of the pensioners. Therefore, Respondents shall pay the arrears of Pension and Dearness Allowance to petitioners with effect from 01.01.2008. The above direction shall be carried out by the respondents within a period of six months from the date of receipt of a copy of this order.

22. The Writ Petitions are allowed in terms of the above direction. No costs.

02.01.2023

Index:Yes/No
Speaking/Non-speaking order
nvsri

To

1. The Special Secretary to Government
 Finance (BPE) Department, Secretariat, Chennai-9.

2.The Principal Secretary to Government
 Transport Department, Secretariat, Chennai-9

3.The Managing Director, Tamil Nadu State Transport
 Corporation (Madurai) Ltd.,
 Bye Pass Road, Madurai-625 010

4. The General Manager
 Tamil Nadu State Transport Corporation
 (Madurai Division -III)
 Ranithottam, Nagercoil-629 001

5.ThAdministrator, Tamil Nadu State Transport Corporation
 Pension Fund Trust, Thiruvalluvar House
 Pallavan Salai, Chennai-600 002

J.NISHA BANU, J.

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Pre-delivery Common Order
in
W.P.Nos.14395 of 2010
to 14403 of 2010

(9 cases)

02.01.2023