THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.07.2023

PRONOUNCED ON : 10.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.17987 of 2013

The Management,
Tamil Nadu State Transport Corporation,
Villupuram Divn.II,
Rep. by its General Manager,
Rangapuram,
Vellore – 632 009. .... Petitioner

Vs

1. The Deputy Secretary to Government,
Labour & Employment (B2) Department,
Government of Tamil Nadu,
Chennai – 600 009.

2. The Presiding Officer,
Principal Labour Court,
Vellore District,
Vellore.

3. The Administrator,
TNSTC Workers Pension Fund,
Chennai.

4. Workmen represented by
The General Secretary,
Tamil Nadu State Transport Corporation
AITUC Employees Union,
62/2, Nethaji Nagar,
Sembakkam,
Vellore – 632 208. .... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorari calling for the records of the 1st respondent in G.O.Ms.No.514 of Labour & Employment Department dated 03.12.2008 in referring the claim of the workmen for an Industrial Dispute and the consequential proceedings of the 2nd respondent in treating the claim of the 3rd respondent as a Industrial Dispute under Section 2(k) of the Industrial Disputes Act in I.D.No.27 of 2009 dated 15.09.2005 and the consequential award of the 2nd respondent in I.D.No.27 of 2009 dated 17.08.2011 and to quash the above orders and proceedings as illegal and without jurisdiction.

For Petitioner	:	Mr.M.Ashwin Standing Counsel
For R1	:	Mr.Yogesh Kanadasan Special Government Pleader
R2	:	Court
R3	:	Mr.C.S.K.Sathish
R4	:	Mr.K.M.Ramesh Senior Counsel for Mr.S.Apunu

O R D E R

This Writ Petition has been filed challenging the Award dated 15.09.2005 passed in I.D.No.27 of 2009 by the second respondent, thereby allowing the claim of the fourth respondent.

2. The reference was made consequent to the demand raised by the fourth respondent challenging the validity of Rule 16(f)(i) and 16(f)(ii) of the Tamil Nadu State Transport Corporation Employees Pension Scheme framed under G.O.Ms.No.135, Transport (D) Department, dated 15.12.2000. The Tamil Nadu State Transport Corporation Employees Pension Scheme was initiated to have a exemption under Section 16(f) of the Employees Provident Fund Act. However, it was questioned by the fourth respondent and though the petitioner raised the validity of the demand, the first respondent referred the issue to the second respondent for the following issues :

> "(a) those workmen who had earlier taken over by the Transport Corporation from the Transport Department for taking out the earlier services rendered by them under Transport Department, they will have to remit their advances with 12% compound interest.

(b) the workmen working in the Transport Corporation are to remit 12% compound interest for their non-refundable advances taken by them before the retirement or else their pensionary benefits could be settled only after such remittance with 12% compound interest.

(c) the workmen who left service between 01.09.1998 to 31.10.2000 are to remit their non refundable advances with 12% compound interest to make them eligible for pension."

3. The petitioner had taken a specific stand that the imposition of the interest cannot be questioned by the workmen and the imposition of the interest was made by the Pension Trust which is a separate entity constituted by the Government. While pending dispute, the fourth respondent filed interim application to implead the third respondent herein and the same was allowed and thereby, the third respondent was impleaded before the second respondent. The Rule 16(f)(i) of the Tamil Nadu State Transport Corporation Employees Pension Rules framed in exercise of powers conferred to the State Government as under the Employees Provident Fund Act, 1952.

Therefore, the validity of the Rule cannot be challenged in a way of a Charter of Demand by workmen before the Labour Officer or before the State Government. It is a part of the Employees Pension Scheme framed under Section 6(a) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (herein after called as "Act") and the terms of interest are a subject of Section 6 of the said Act. The exemption was granted by the Central Government under Section 17 of the Act on account of the formation of the Pension Trust and approving the framing of the Rules by the State Government. Therefore, the Rules have gained status of a statutory validity and the same cannot be questioned before the Labour Officer.

4. The petitioner also raised another ground that a validity of a Rule cannot be treated as a dispute under Section 2(k) of the Industrial Disputes Act. Accordingly, the dispute is a difference between the employer and the employee and vice versa and between workmen also. The imposition of interest rates, grant of pension, gratuity cannot be broadened as a dispute as enlisted in Schedule II and III of the

Industrial Disputes Act. Though the third respondent did not challenge the award, the third respondent sailed with the petitioner and supports the case of the petitioner.

5. The learned counsel for the third respondent pointed out that as per the Tamil Nadu State Transport Corporation Employees Pension Scheme, the Rules framed therein and Rule 10A(iv) says that any non-refundable advance drawn by the member out of employer contribution upto the date of implementation of the Scheme along with interest at 12% compounded annually. The Rule framed under the settlement between the employees and the Corporation. Therefore, they cannot challenge the Rule. The petitioner's employees after the formation of the the petitioner Corporation are were governed by the Tamil Nadu State Transport Corporation Employees Pension Rules framed by the Government of Tamil Nadu, as its own without any workers' settlement and the pension fund is being administered by the Administrator of the Trust. The workmen members are not elected by the workmen but appointed by the Tamil Nadu State Transport Corporation.

6. The Pension Rules framed by the petitioner neither published nor copies supplied to the workmen. Therefore, the workmen did not know the contents of the said Rule. Accordingly, the workmen, who had been taken over by the Transport Corporation from the Transport Department, for taking out the earlier service rendered by them under Transport, will have to remit their advances with 12% compound interest and the workmen are to remit 12% compound interest for their non-refundable advances taken by them before their retirement or else their pensionary benefits could be settled only after such remittance with 12% compound interest.

7. Rule 16(f)(i) of the Tamil Nadu State Transport Corporation Employees Pension Scheme, says that in the case of existing member who have drawn non refundable advance before the implementation of this Scheme out of the employer contribution, shall repay along with interest compounded annually calculated at the rate of interest declared or the members by the Provident Fund Trust of respective unions for the respective years from the date of drawl of non

refundable advance. Otherwise, the pensionary benefits will be reduced proportionately.

8. Rule 16(f)(ii) of the Tamil Nadu State Transport Corporation Employees Pension Scheme says that in the case of members who had left the service from 01.09.1998 to 31.10.2000 the amount which would have been available to the credit of the member at the time of his leaving the service as employer's contribution and interest calculated as per Rule 16(f)(i) shall be the amount to be remitted back by the member or his legal heirs. If the member opts for commutation under Rule 17(A), he shall have the option to net off such amount due for remittance against the commuted amount calculated on the basis of pension eligibility. If the member, had not drawn such non refundable advance. If the commuted amount is less than the amount due for remittance by the member, he shall be entitled for pensionable benefits after the remittance of the balance amount to the fund with interest at 12% compounded annually from the date of exit from service to the date of remittance. Otherwise, the pensionary benefits will be proportionately

reduced. If the member does not opt for the commutation, only after the remittance of the amount due, as arrived at above, the member shall be entitled for the pensionary benefits admissible under the Scheme. Otherwise, the pensionary benefits will be proportionately reduced.

9. The subscriptions paid by the workmen towards pension fund are being utilized by the petitioner for their commercial activities and are being earned profit, in which the workmen have no control either or receives any share of profit. Therefore, any welfare trust created for the welfare of their workmen cannot do money lending business with its own workmen to pay pension for them. Further, the second respondent had concluded that the petitioner had conveniently filed the interest rate to be paid for the subscriptions for only one year. It is held that at no time in the previous years, the interest allowed was not more than 12% p.a. The interest rate paid for the subscriptions were at 12% p.a. only from 1989-1990 to 30.06.2000. Before that period, the interest was less than 12% p.a. However, the interest was calculated at compound rate for the year ending 31.03.1993 at 12.15%. Therefore, the petitioner Management charges interest on his own without any justification.

10. That apart, the petitioner also failed to file the Circular dated 15.12.2000 in G.O.Ms.No.135. Even before this Court, the petitioner failed to produce the documents and as such, the second respondent rightly concluded that the compoundable 12% interest charged on the non-refundable loan obtained from the Management Corporation contribution of employees provident fund has to be charged in simple interest as specified by the provident fund authority to be calculated for the loan period is justified. Hence, this Court finds no infirmity or illegality in the Award dated 15.09.2005 passed in I.D.No.27 of 2009 by the second respondent. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs.

10.08.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
Lpp

To

1. The Deputy Secretary to Government,
Labour & Employment (B2) Department,
Government of Tamil Nadu,
Chennai – 600 009.

2. The Presiding Officer,
Principal Labour Court,
Vellore District,
Vellore.

3. The Administrator,
TNSTC Workers Pension Fund,
Chennai.

G.K.ILANTHIRAIYAN, J.

Lpp

Pre-delivery order in
W.P.No.17987 of 2013

10.08.2023