IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

CORAM:

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

W.P.No.24621 of 2013

Tamilnadu Arasu Pokkuvarathu Kazhaga
Thozhilalar Nala Sangam, rep by its
President A.Yogannan,
No.1-18-20-F, Kuzhithurai,
Padanthalumood, Kanyakumari District ... Petitioner

Vs.

1.The Managing Director,
Metropolitan Transport Corporation,
Chennai 600 002
2.The Managing Director,
State Transport Corporation, Madurai
3.The Managing Director,
State Express Transport Corporation,
Chennai 600 002
4.The Managing Director,
Tamilnadu State Transport Corporation,
Coimbatore
5.The Managing Director,
Tamilnadu State Transport Corporation,
Kumbakonam
6.The Managing Director,
Tamilnadu State Transport Corporation,
Salem
7.The Managing Director,
Tamilnadu State Transport Corporation,
Thirunelveli

8.The Managing Director,
Tamilnadu State Transport Corporation,
Villupuram
9.The Government of Tamilnadu,
rep. by its Commissioner / Secretary,
Transport Department, Fort St.George,
Chennai 600 009
10.The Presiding Officer,
The Industrial Tribunal, Chennai ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus calling for the records of the respondents, particularly the 10th respondent relating to its order made in ID.No.20/2011 dated 18.01.2013 as communicated to the petitioner pursuant to Gazette Notification No.Aa/86/13 dated 22.02.2013 and quash the same as null and void, illegal and invalid, and consequently directing the respondents 1 to 9 to refund the petitioner or its Employees (those who were in service at the relevant period of time, not continuing in service or retired from service on Superannuation or on voluntary retirement) suffered due to unlawful recovery for the period from 1998 to 31.08.2012 under the caption 'Variable Dearness Allowance' contrary to the terms of 12(3) Settlement together with interest at the rate of 24% per annum from the date of each deduction / recovery.

For Petitioner : Mr.Maria Joseph David
for Mr.A.Amal Raj

For Respondents

For R2 & 7 : Mr.C.Gauthamaraj

For R5 : Mr.S.Sathya Gandhi

For R6 : Mr.R.Babu

For R3 : Mr.S.Sivasubramani

For R1, 4, 8, 9 : No appearance

R10 : Tribunal

ORDER

This writ petition has been filed challenging the award passed in ID.No.20/2011 dated 18.01.2013, thereby dismissed the industrial dispute raised by the petitioner to refund the recovery.

2. The petitioner is a registered Trade Union for the Transport Employees. The Transport Corporation i.e. the respondents 1 to 8 had earlier negotiated with 4 Trade Union with related to wages and allied subjects. As directed by the Hon'ble Division Bench of this Court to conduct election through secret ballot to elect the representatives for the wage negotiation in the year 1998 for a period of three years.

Accordingly, election was held on 04.12.1998 and one member was entitled to be represented for 21 Transport Corporation. While being so, the rate of Variable Dearness Allowances as agreed upon by the three representatives of employees by way of VIII wage settlement and to be paid to the employees as per clause 3 of the memorandum of settlement. Accordingly, 'Variable Dearness Allowance' linked to the Consumer Price Index shall be payable at the rate of Rs.02/-. Only per each point increase over and above 1924 points commencing from 01.10.1998. The object of Dearness Allowance is to alleviate sufferings and hardships faced by the employees on account of the cost of essential commodities coming under the consumer categories.

2.1 While being so, the respondents have made recoveries from the salary of each and every employees, those who have covered under 12 (3) settlement during the month of May 1999 under the caption Dearness Allowance which varied according to the respective basic pay drawn by the employees. It is reliably learnt from the Office of the respondents that they had recovered a portion of the Dearness Allowance paid with effect from 01.09.1998 It is really arbitrary and illegal on the part of the respondents to effect recoveries without prior notice and without giving opportunity of hearing to the employees. The adjustment of Dearness Allowance from the future payment of Dearness Allowance will not arise and no such clause is provided in the 12(3) settlement. Therefore, the petitioner had represented about the recovery to the respondents on 02.06.1999 after facing necessary resolution to that effect. They challenged before this Court in WP.No.12891 of 1999 and WP.No.10643 of 2000. Though initially this Court granted interim stay, subsequently both the writ petitions were dismissed by this Court by order dated 27.08.2001. Aggrieved by the same, the petitioner filed writ appeals in W.A.Nos.1941 and 1942 of 2001 and the Honble Division Bench of this Court by common order dated 08.12.2010 set aside the order passed by the learned Single Judge and referred the dispute before the Industrial Tribunal to decide the dispute in interpretation of the provisions under 12(3) settlement dated 13.02.1999 for adjudication under Section 38A of the Industrial Disputes Act.

3. Heard the learned counsel appearing on either side.

4. The learned counsel mainly relied upon GO.Ms.No.286 dated 28.08.2018, in which the Finance(Pension) Department passed order based on various decisions of the Hon'ble Supreme Court of India that the recovery from employees belonging to class III and IV service (or Group 'C' and Group 'D' service, the recoveries by the employers would be impermissible in law. Further he relied upon the order of the Hon'ble Supreme Court of India in Civil Appeal No.11527 of 2014, in which the Hon'ble Supreme Court of India held that such recovery from employees belonging to the lower ranks “i.e. class III and class IV, sometimes denoted as group 'C' and 'D') of service, shall not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and there would be breach mandate contained under Article 14 of Constitution of India.

5. It is true that the recovery should not be made from the employees belonging to class III and IV service (or Group 'C' and Group 'D' service). In the case on hand, after election was conducted based on the order passed by the Hon'ble Division Bench of this Court, a bilateral discussion was held between the Chairman and the representatives' Employees Trade Union on 12.01.1999 and 05.02.1999 and also held subsequently on 10.02.1999 and 11.02.1999. On 13.02.1999, another meeting was held and it was resulted in a settlement under Section 12(3) of Industrial Disputes Act. The clause 3 of the settlement provides for 'variable dearness allowance'. As per the said clause, the variable dearness allowance would be continuous to be calculated on quarterly basis taking into consideration of the rise or fall in the average consumer price index from quarter to quarter. The variable dearness allowances linked to the consumer price index shall be payable at the rate of Rs.2/- per each point increased over and above 1924 points commencing from 01.10.1998. As the average point of consumer price index for the first quarter are issued by the Government only during the middle of the second quarter, the allowance paid for the first quarters was continued and if there is any rise

or fall in the consumer price index, the same will be paid or recovered in the subsequent monthly salary. Therefore the recovery made by the respondents is only the excess payment made during the earlier quarter in view of the fall in consumer price index as per clause 12(3) settlement dated 13.02.1999. Therefore, the Government Order and the judgment cited by the learned counsel for the petitioner is not applicable to the case on hand.

6. Therefore, the recovery was made from the employees for maintaining consumer price index. In fact, most of the Transport employees have not disputed settlement made by respondents. That apart, the said recovery was made only one time i.e. in the year 1999 and no recovery was made subsequently. No one had objected in respect of recovery made by the respondents. In order to substantiate the recovery, the respondents marked Exs.M5 to M8. Accordingly, the respondents had deducted the amount for maintaining the consumer price index in terms of rise and fall in the consumer price index. Therefore, 10^{th} respondent rightly rejected the request made by the petitioner and this Court finds no

infirmity or illegality in the order passed by the Labour Court.

7. Accordingly, this writ petition is dismissed. There shall be no order as to costs.

17.07.2023

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

G.K.ILANTHIRAIYAN, J.

lok

To

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8.The Managing Director,
Tamilnadu State Transport Corporation, Villupuram
9.Commissioner / Secretary,
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Transport Department, Fort St.George,
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10.The Presiding Officer,
The Industrial Tribunal, Chennai
11. The Public Prosecutor,
High Court, Madras.

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