IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.25759 of 2021 and
W.M.P.No.27213 of 2021

1.Ooivu Petra Theyilai Thootta Paniyalargal
Nala Sangam,
(Retired Tea Plantation Paniyaalar Welfare Association)
Reg.No.270/2018, Rep. by its President,
No.17, Jayabarathi Vilas,
Palanigounden Pudur, K.V.Vadamadurai,
Coimbatore 641 017.

2.M.Rathinakumar

... Petitioners

Vs.

1.Government of Tamil Nadu,
Rep by its Principal Secretary to Government,
Environment, Climate Change and Forests Department,
St. Fort George, Secretariat, 7th Floor, Chennai 600 009.

2.Tamil Nadu Tea Plantation Corporation Ltd. (TANTEA),
Rep. by its Managing Director,
Orange Grove Road,
Coonoor 643 101.
Nilgiris District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 29.10.2021 in G.O.Ms.No.94, Environment, Climate Change and Forest (FR.8) Department, issued by the first respondent and quash the same in so far as restricting the pay revision only to the serving employees of the 2nd respondent Corporation; in so far as not extending the pay revision to the retired employees of the 2nd respondent Corporation, in so far as giving the pay revision only from the date of the G.O. and in so far as not giving the pay revision with effect from 01.01.2016 and in so far as confining the monetary benefits only with effect from 29.10.2021 and consequently, direct the respondents to give and grant pay revision to the members of the petitioner Association / 1st petitioner whose names are given in the typedset including the 2nd petitioner as given to the serving employees of the 2nd respondent Corporation and to give such pay revision to the petitioner notionally with effect from 01.01.2016 and with monetary benefits from 01.10.2017 to the date of their retirement and to revise and pay the petitioner the revised gratuity and earned leave, based on such revised pay as on the date of their retirement and to pay the arrears of salary to the persons who have retired in between 01.10.2017 and 30.04.2020, with interest at the rate of 12% per annum.

For Petitioners : Mr.V.Ajoy Khose
For Respondents : Mr.Haja Naziruddeen,
Addl. Additional General assisted by
Mr.T.Arun Kumar, AGP

ORDER

This Writ Petition has been filed seeking to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 29.10.2021 in G.O.Ms.No.94, Environment, Climate Change and Forest (FR.8) Department, issued by the first respondent and quash the same and consequently, direct the respondents to grant pay revision to the members of the first petitioner / Association and the 2nd petitioner as given to the serving employees of the 2nd respondent Corporation, notionally with effect from 01.01.2016 and with monetary benefits from 01.10.2017 to the date of their retirement and to revise and pay the petitioners the revised gratuity and earned leave, based on such revised pay as on the date of their retirement, pay the arrears of salary to the persons who have retired in between 01.10.2017 and 30.04.2020, with interest at the rate of 12% per annum.

2. Heard Mr.V.Ajoy Khose, learned counsel for the petitioners and Mr.Haja Naziruddeen, learned Additional Advocate General for the respondents.

3. The petitioner Association represents those employees worked in Tamil Nadu Tea Plantation Corporation Ltd. (TANTEA) and got retired till 2020. According to Rule 12 of Staff Service Rules of TANTEA, *pay, Dearness Allowance and Compensatory Allowances shall be paid to the employees at the rates applicable to State Government employees from time to time*.

4. Mr.V.Ajoy Khose, learned counsel for the petitioners submitted that by virtue of the Government Order in G.O.Ms.No.303 dated 11.10.2017, orders have been issued for implementation of the recommendations of the Official Committee 2017 on revision of pay, allowances, pension and related benefits. One among the benefits implemented is revision of pay also. According to the above Government Order, the rules are termed as Tamil Nadu Revised Pay Rules 2017 and it come into effect from 1st January 2016. But the monetary benefit will be from 01.10.2017. However when extending the said benefit to the State Public Sector undertaking like TANTEA and other statutory Boards, the implementation was given with effect from the date of G.O.Ms.No.94

dated 29.10.2021. In fact G.O.Ms.No.94 dated 29.10.2021 was issued following the announcement made by the Government of Tamil Nadu in the Budget Session during the Assembly Session 2021-22, considering the implementation of the long pending pay revision.

5. When the Staff Service Rules of TANTEA employees guarantees same pay rate applicable to the employees of the State Government, there should not have been any discrimination between the employees of the TANTEA and the employees of the other Government Departments. Despite the revised pay rules have come into effect on 01.01.2016 with monetary benefit from 01.10.2017, G.O.Ms.No.94 would stipulate that the financial benefits will accrue only from the date of issuance of the said Government Order. However, those persons who have been in service during the relevant point of time have been given with the revision from 01.01.2016 notionally till 29.10.2021 and actual monetary benefits from the date of Government Order (i.e) from 29.10.2021. The impugned Government Order restricts the benefits only for those employees who were in service as on 29.10.2021. Hence the petitioners claim that all those employees who were in service on the day when G.O.Ms.No.303, dated 11.10.2017 are entitled to the revised pay and hence there cannot be any discrimination between those employees who were in service as on 29.10.2021 and those employees who were in service during the enforcement of G.O.Ms.No.303 dated 11.10.2017.

6. However, Mr.Haja Naziruddeen, learned Additional Advocate General brought the attention of this Court to the amendment that was made to the service rules with effect from 04.01.2019. On 04.01.2019, the following amendment has been made to Rule 12 of the Service Rules of TANTEA:

> "**Rule 12 - Pay and Allowances**
>
> *Pay, Dearness Allowance and Compensatory Allowance shall be paid to the employees at the rates applicable to State Government employees from time to time subject to approval of the Board and Government."*

So, with effect from 04.01.2019, the pay and allowance of the TANTEA employees will be at the rates of State Government employees, however subject to the approval of the Board and Government.

7. It is further submitted by the learned Additional Advocate General that the amendment has been made primarily due to the financial constraints that might be faced by the Public Sector undertakings and hence, the monetary benefits should not be a huge burden on the Corporation.

8. Even according to the submission of the learned Additional Advocate General, the amendment has come into force only from 04.01.2019 and G.O.Ms.No.94 has been brought only on 29.10.2021. In the absence of any amendment to the Service Rules, there will be no difficulty in claiming parity on par with the Government Servants. Because the Rule with regard to pay and allowance as it existed prior to 04.01.2019 was an unconditional parity between the employees of the TANTEA and the Government Servants. Since G.O.Ms.No.303 dated 11.10.2017 could not have made any reference about the amendment which was brought in the year 2019 or in other words, G.O.Ms.No.303 dated 11.10.2017 did not have any impact on the subsequent amendment to the service rules.

9. G.O.Ms.No.94 dated 29.10.2021 has been issued consequent to G.O.Ms.No.303 dated 11.10.2017. In such case, G.O.Ms.No.94 cannot be read in terms of amendment which was brought in the year 2019, but it should be relative to Government Order which was issued on 11.10.2017.

10. Because the source of G.O.Ms.No.94 dated 29.10.2021 is the earlier Government Order in G.O.Ms.No.303 which was issued in the year 2017. Hence, all of a sudden, there cannot be any shift in invoking the amendment of the Service Rules made in the year 2019. Since the benefit has already been given in the year 2017 itself and G.O.Ms.No.94 dated 29.10.2021 is only consequent to the benefit which has already been granted in the year 2017, it ought to have been extended to all those who were in service when G.O.Ms.No.303 dated 11.10.2017 was brought into force and in which, the date of implementation has been clearly mentioned as '01.01.2016' for notional purpose and '01.10.2017' for monetary benefit.

11. However, while issuing G.O.Ms.No.94 dated 29.10.2021, the Government has overlooked the above factual position and extended the benefit only for 212 staff of Tamil Nadu Tea Plantation Corporation limited who were in service as on the day when the Government Order was issued. The relevant paragraphs are extracted hereunder:

> *"4. In the Budget Session the Government of Tamil Nadu has made an announcement during the Assembly session 2021-22 that the pay for 212 staff of Tamil Nadu Tea Plantation Corporation Limited will be revised during this year towards implementation of long pending pay revision.*
>
> *5. The Government accord permission to Managing Director, Tamil Nadu Tea Plantation Corporation Limited to implement the orders of Government issued on the Tamil Nadu Revised Pay Rules, 2017 on revision of pay, allowances and related benefits to the staff of Tamil Nadu Tea Plantation Corporation Limited with effect from the date of issue of order.*
>
> *6. This order issues with the concurrence of Finance (BPE) Department vide its U.O.No.44649/Fin(BPE)/2021, dated 21.10.2021."*

12. So far as these portions are concerned, it has been issued directly in contravention to the source of G.O.Ms.No.303 dated

11.10.2017 and also the Tamil Nadu Revised Pay Rules, 2017 and the statutory Service Rules which were in force prior to 2019.

13. The learned Additional Advocate General raised a submission that instead of the aggrieved employees, the Sangam has filed this Writ Petition and hence, it is fundamentally not maintainable.

14. It is true when there is an employee - employer relationship between the individual and the Government, the individual has to fight for his/her cause and not the Association should espouse his cause. However, in the instant case, all the petitioners got retired from service and the relationship between the employee-employer has ceased to exist. In this regard, the learned counsel for the petitioners attracted the attention of this Court to the judgment of the Hon'ble Supreme Court rendered in ***Confederation of Ex.Servicemen Associations and Others Vs. Union of India and Others, reported in (2006) 8 SCC 399.*** In the said case, the Hon'ble Supreme Court has held as under:

"22. We have given anxious and thoughtful consideration to the rival contentions raised by the parties. So far as the preliminary objection regarding maintainability of the petition is concerned, it may be stated that the petitioner has asserted in the petition that it is a Confederation of five ex-servicemen Associations formed in furtherance of common cause. The aims and objects of the Confederation have also been annexed as set out in the MoU (Annexure 'P-1'). In the affidavit in reply filed by the Under Secretary working with the Ministry of Defence, it was stated that he is 'not aware' of the existence of the petitioner organization. He, however, stated that the organization 'does not seem' to be registered body to represent the cause of ex- servicemen. The rejoinder affidavit unequivocally states that the objection raised by the Union of India is incorrect. The Confederation was registered under the Societies' Registration Act, 1860. Likewise, all Associations which constitute the Confederation are similarly registered individually. It is further stated that Air Force Association and Indian Ex-Services League are even recognized by the Ministry of Defence, Union of India. It, therefore, cannot be said that the petitioner- Confederation is not

registered and the petition filed is not maintainable. In view of the fact that some of the Associations have been recognized even by the Ministry of Defence, the deponent ought not to have raised the objection regarding maintainability of the petition without ascertaining full facts and particulars. We leave the matter there holding the petition maintainable.

23. We are also satisfied that the contention of the respondent is even otherwise not tenable at law. A similar point came up before a Constitution Bench of this Court in the well known decision in D.S. Nakara v. Union of India, (1983) 1 SCC 305. There also, one of the petitioners was a Society registered under the Societies' Registration Act, 1860. It approached this Court for ventilating grievances of a large number of old and infirm retirees who were individually unable to approach a court of law for redressal of their grievances. This Court held locus standi of the Society 'unquestionable'. In the present case, apart from the fact that a larger public issue and cause is involved, even individually, all Associations are registered Associations of ex- servicemen. The petitioner-Confederation representing those Associations which is also registered, can certainly approach this Court by *invoking the provisions of Part III of the Constitution. We, therefore, reject the preliminary objection raised by the respondents and hold that the petitioner-Confederation has locus standi to file the petition.*

24. In our view, however, maintainability of petition and justiciability of issues raised therein are two different, distinct and independent matters and one cannot be mixed or inter-linked with the other."

15. Had the petitioners are the serving employees, there is a force in the submission of the learned Additional Advocate General that the Association did not have *locus standi* to file this Writ Petition. Since the retired employees have themselves formed an Association among themselves, it is not possible for each retired employee to come and file a case. Hence the Sangam represents their common cause.

16. In view of the above stated reasons, necessary directions should be given to the first respondent to rectify G.O.Ms.No.94, Environment, Climate Change and Forest (FR.8) Department, dated 29.10.2021, to include all those employees who were in service as on 01.01.2016.

17. Thus, this Writ Petition is disposed and the first respondent is directed to issue orders to rectify G.O.Ms.No.94, Environment, Climate Change and Forest (FR.8) Department, dated 29.10.2021, to include all those employees who were in service as on 01.01.2016 and give pay revision to the petitioners notionally with effect from 01.01.2016 and give monetary benefits from 01.10.2017 to the date of their retirement. Consequently, connected miscellaneous petition is closed. No costs.

06.12.2023

Index : Yes
Internet : Yes/No
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To

1.The Principal Secretary to Government,
Government of Tamil Nadu,
Environment, Climate Change and Forests Department,
St. Fort George, Secretariat, 7th Floor, Chennai 600 009.

2.The Managing Director,
Tamil Nadu Tea Plantation Corporation Ltd. (TANTEA),
Orange Grove Road,
Coonoor 643 101.
Nilgiris District.

R.N.MANJULA, J.

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