BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:**02.03.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.(MD)Nos.1147, 3659, 12530, 3300, 12305, 18606, 4340, 2661, 644, 12641, 12986, 2648, 4359, 4143, 11715, 16367, 11635, 3656, 3441, 2529, 2610 and 2528 of 2020
and
W.P(MD)Nos.16323, 19491, 20139, 19048, 19049, 19490, 11847, 12410, 18809, 16121, 16055, 18662, 16016, 12563, 16417, 18663, 16290 of 2022
and
W.P(MD)No.27102 and 27376 of 2019
and
W.M.P(MD)Nos.10176, 10551, 10772, 3493, 475, 2175, 10940, 10694, 2773, 3649, 2293, 3094, 2275, 3097, 476, 907, 3667, 2176, 2256, 910 2900 of 2020
and
W.M.P(MD)No.23638 of 2019

W.P(MD)No.1147 of 2020:

1.Pokkuvarathu Kazhaka Ovyu Petra
Aluvalar Nala Sangam, Kovai,
(Regd. No.269/2011),
Rep. by its Authorised person,
Mr.Alagarsamy

2.K.Singaram ... Petitioners

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Transport Department,
Secretariat,
St. George Fort,
Chennai.

2.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Finance Department,
Secretariat,
St. George Fort,
Chennai.

3.The Administrator,
TNSTC Employees Pension Trust,
Thiruvalluvar House,
No.2, Pallavan Salai,
Chennai – 600 002.

4.The Managing Director,
State Express Transport Corporation TN Limited,
Thiruvalluvar House,
No.2, Pallavan Salai,
Chennai – 600 002.

5.The Managing Director,
Tamil Nadu State Transport Corporation (CBEU) Ltd.,
37, Mettupalayam Road,
Coimbatore – 641 043. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the first respondent vide his proceedings G.O.(Ms)No.142 Transport(E) Department, dated

26.08.2019 and quash the same as illegal insofar as it relates to Clause 3(b) and (c)are concerned and consequentially to direct the respondents to pay the arrears of revision of pension as per 7th Pay Commission in terms of G.O(Ms)No.134 Transport (D) Department, dated 09.04.2018 which was issued based on G.O.Ms.No.303 Finance (pay cell) Department, dated 11.10.2017 by the first respondent and the consequential circular dated 09.05.2018 issued by the third respondent in which notional effect is from 01.01.2016 and monetary benefits effect is from 01.10.2017 and also to pay the dearness allowance at the present rate of 17% and to pay the dearness allowances in future on par with the employees in service within the period that may be stipulated by this Hon'ble Court.

For Petitioners	: Mr.M.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates
For R-1 & R-2	: Mr.Veerakathiravan, Additional Advocate General Assisted by, Mr.S.P.Maharajan, Special Government Pleader
For R-3 & R-5	: Mr.J.Senthil Kumar
For R-4	: Mr.S.C.Herold Singh,

COMMON ORDER

Since the issue raised in these writ petitions is one and the same, these writ petitions are disposed of by way of this common order.

2. The writ petitions have been filed either by the Association of the retired employees of the Transport Corporation or by the retired employees.

3. The case of the petitioners is that after unblemished service rendered in the Transport Corporation, the petitioners/employees retired from service on various dates. The respondent Pension Trust is paying pension on behalf of the Transport Corporation. The respondent Corporation implemented the 7th Pay Commission vide G.O(Ms).No.319 Finance (BPE) Department, dated 26.10.2017 and the same was duly approved by the second respondent Finance Department, granting monetary benefit w.e.f. 01.10.2017, however subject to the approval of the minutes of the 192nd meeting of the concerned Board of Directors held on 15.12.2017. Following the same, the respondent Transport Corporation after getting approval from the Board of all the concerned

Transport Corporations in the State of Tamil Nadu, issued G.O.(Ms)No.134 -Transport (D) Department dated 09.04.2018. The said G.O., was given effect to and salary of the employees of the Transport Corporation was revised and the same has been paid to those who were on rolls on 01.04.2018 and arrears were also paid to them.

4. It is the further case of the petitioners that in pursuant to the 7th Pay Commission, the Government of Tamil Nadu Revised Pay Rules 2017, was implemented to the Managerial Cadre Officer and Technical/Administrative Supervisory Cadre Employees, vide G.O.Ms.No.134, dated 09.04.2018. The implementation of revised pay was given notional effect with effect from 01.01.2016 and monetary benefits with effect from 01.10.2017. Subsequently, the Board of Directors of the respondent Transport Corporation, conducted a meeting on 28.08.2018 and passed a resolution in No.58/2018-19, to implement the benefit of the 7th Pay Commission. However, the revised pension was not at all given to the employees in terms of the above said Government Orders. The petitioners are governed by the Tamil Nadu State Transport Corporation Employees Pension Rules.

5. While the matter stood thus, one Rajendran filed a writ petition in W.P(MD)No.21025 of 2018, seeking for issuance of a Writ of Mandamus, directing the respondents to revise the pensionary benefits and other revised terminal benefits like Gratuity Arrears, Leave Salary Arrears and Pension Arrears etc., with interest at the rate of 12% per annum payable from the date of retirement to till the date of payment of the said monetary benefits based on the 7th Pay Commission and the resolution of the Board of Directors in Resolution No.58/2018-19 and as per G.O.Ms.No.134 Transport(D) Department, dated 09.04.2018. This Court vide order, dated 23.10.2018, was pleased to dispose of the said writ petition, directing the respondents to pay arrears with 6% interest. Likewise, several orders were passed by this Court and Principal Bench of this Court.

6. The further case of the petitioners is that as against the order passed in W.P(MD)No.21025 of 2018, dated 23.10.2018, a writ appeal was filed in W.A(MD)No.475 of 2019. In the meanwhile, to implement the order made in yet another writ petition in W.P.No.26478 of 2018, dated 31.01.2019, some of the retired employees filed a contempt

petition in Cont.P.No.917 of 2019 and the same was posted for reporting compliance on 26.08.2019. It was only at the time of hearing, the respondents issued the impugned G.O.(Ms)No.142 Transport(E) Department, dated 26.08.2019, in and by which, the revision of pension as per the 7th Pay Commission was implemented prospectively. While so, the writ appeal in W.A(MD)No.475 of 2019 was taken up for hearing and the Hon'ble Division Bench of this Court vide order, dated 14.11.2019, disposed of the said writ appeal directing the Transport Corporation to give effect to G.O.Ms.No.142 Transport (E) Department, dated 26.08.2019.

7. The grievance of the petitioners is that after adopting all procedures, the Government issued G.O.Ms.No.134 Transport(D) Department, dated 09.04.2018, to implement the pay revision and the same was effected with retrospective monitory effect from 01.10.2017. Therefore, there is no necessity to issue another G.O.No.142, dated 26.08.2019, to implement the same, prospectively for the pensioners alone.

8. Further, by virtue of G.O.(Ms)No.323 Finance(Allowances) Department, dated 17.10.2019, w.e.f., 01.07.2019, the dearness allowance of the serving Government employees were enhanced to 17% and the same is also being followed in respect of the retired employees as well in terms of G.O.(Ms)No.327 Finance(Pension) Department, dated 21.10.2019. However, as far as the serving employees of the Transport Corporation are concerned, the dearness allowance is being paid at the rate of 17% and as such, there is every justification to pay dearness allowance to the retired employees of the Transport Corporation also at the rate of 17%.

9. As a matter of fact, the Transport Department, vide Government letter dated 15.12.2000, has made it very clear that the pensioners who are drawing State Government Pay Scale and Dearness Allowance at the time of retirement are entitled for the dearness allowance at the rate applicable to State Government pensioners. Since the petitioners were receiving State Government pay at the time of their retirement, they are entitled to get dearness allowance at the rate of 17%. However, as per Clause 3(c) of the impugned G.O., the dearness allowance shall be

continued at the present rate without any change. However, the petitioners/employees have not been paid with the dearness allowance on par with the serving employees and they are being paid only 5% of dearness allowance. However, the impugned G.O., came to be passed contrary to the earlier proceedings of the Transport Corporation whereby the Corporation approved the revision of monetary benefits of 7th Pay Commission with effect from 01.10.2017 and the same is not required to be modified giving monetary benefit prospectively. Therefore, aggrieved by the said G.O., the petitioners have filed these writ petitions with the aforesaid prayer.

10. The learned counsel appearing for the petitioners would submit a Committee was constituted for implementation of the 7th Pay Commission to the Officers / Supervisory cadre employees of the Transport Corporations, who have retired from 01.01.2016 to 31.03.2018. However, G.O.(Ms)No.142, Transport(E) Department, dated 26.08.2019, was issued to grant monitory benefit prospectively quoting the proposal of the Administrator of the Pension Fund Trust. As per Clause Part II(3h) of the Tamil Nadu State Transport Corporation

Employees Pension Fund Trust Rules, the Trustees shall comply with and carry out all the directions given to them by the State Transport undertakings. As such, the Administrator, a Trustee has no power to decide or recommend proposal of effective date of benefit when that was already decided by the respective Boards of all Transport Corporations. As far as the employees, who have retired between 01.01.2016 and 31.03.2018 are concerned, the respondents have revised the salary and have paid the difference in salary based on the said revision and the same has been duly credited to the bank account of the respective retired employees directly. But, the respondents failed to pay the revised terminal benefits, pension arrears w.e.f. 01.10.2017 and dearness allowance on par with regular employees, which is *per se* illegal and hence, prays for allowing of these writ petitions.

11. Per contra, the learned Additional Advocate General appearing for the official respondents would submit that considering the representation of the Unions, in the 12(3) settlement, which came into effect from 01.09.1998, it was agreed by the Government to form a Pension Trust by transferring the funds lying in the credit of all employer

contribution of Provident Fund to the Trust and it was decided to send the employer's contribution amount to the Trust for making pension payment. As on the date of implementation of the pension Scheme, ie., on 01.09.1998, as decided in the 12(3) wage settlement, the managerial cadre employees are not parties to the said scheme and only the working group of the Union and their federation are the parties thereto. But, subsequently, based on the representation of the managerial cadre officers, the Scheme was extended to them also by issuing a Government Order.

12. It is further submitted that considering the paucity of funds, for the purpose of regulating the pension scheme to continue, it was decided to freeze the dearness allowance to the retired employees in their pension payment. This is only a policy decision resorted to by the respondents, so as to sustain the pension scheme in view of the loss incurred by the Transport Corporation and it cannot be faulted with. In the subsequent wage settlement which came into effect from 01.09.2010, it was decided to enhance the dearness allowance on par with Government notification. Hence, in strict compliance with the wage

settlement, it is now followed for the serving employees. But, the pensioners are not legally entitled to claim dearness allowance on par with serving employees. Hence, considering the loss incurred by the Transport Corporation, it was decided to grant a different dearness allowance to the pensioners and it is the prerogative of the Government and it is a matter of policy decision. Hence, the allegation of discrimination between serving and retired employees is not sustainable.

13. Further, in Rule 20(A) of the Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules, the subject of dearness allowance is dealt with exhaustively and it has been specifically mentioned that nominal dearness allowance shall be paid and it is categorically mentioned that the rates of dearness allowance may be determined by the Government. Hence, there is no reason to go against Rule 20(A).

14. As regards the contention of the petitioners that Government employees are getting the revision of dearness allowance periodically is concerned, it is emphatically submitted that as far as Government

employees are concerned, they joined the Government through the Tamil Nadu Public Service Commission and pension is paid from the Government Treasuries and their pension payment is regulated by the Government as per Tamil Nadu Pension Rules, 1978. The petitioners are not entitled to quote the system in Government employees pension, since the pension for the employees of the Transport Corporation is totally unconnected with that of the Government employees.

15. As regards the prayer of the petitioners to quash G.O.(Ms)No.142, Transport (E) Department, dated 26.08.2019, which stipulates prospective effect for the benefit, it is submitted that the impugned Government Order is the outcome of a Committee constituted for this purpose. As per the Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules, it is the prerogative of the State Government to determine the rates of dearness allowance to the pensioners and accordingly, G.O.(Ms)No.142, Transport (E) Department, dated 26.08.2019 was issued after due application of mind and therefore, the writ petitions are liable to be dismissed.

16. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

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 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 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 sub-paragraph (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, 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.

....

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 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 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.

20. The writ petitions are disposed of in the above terms. No Costs. Consequently, connected miscellaneous petitions are closed.

02.03.2023

PM
NCC:Yes/No
Index:Yes/No

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Transport Department,
Secretariat,
St. George Fort,
Chennai.

2.The Principal Secretary to Government,
State of Tamil Nadu,
Finance Department,
Secretariat,
St. George Fort,
Chennai.

M.DHANDAPANI, J.

pm

W.P.(MD)No.1147 of 2020 etc., batch

02.03.2023