BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.4923, 4924, 4925, 4926, 4927, 4928, 4929, 6758, 6762, 6763, 6764, 6765, 6766, 6909, 6910, 6911, 6912, 6913, 6917, 6918, 6919, 6920, 13827, 13828, 13829, 14601, 14602, 17088, 17294, 17295, 17296 & 18729 of 2023 & 18049 of 2020 (33 cases)
and
W.M.P(MD)Nos.11654, 11662, 11659, 12345, 12351, 14306 & 15545 of 2023

W.P(MD)No.4923 of 2023:-

S.Murugaiyan ... Petitioner

Vs.

1.The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Represented by its Managing Director,
No.27, Railway Station New Road,
Kumbakonam.

2.The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Nagapattinam Region,
Nagapattinam.

3.The Administrator,
The Tamil Nadu Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai – 02.

4.The Secretary to Government,
Transport Department,
Secretariat,
Chennai – 600 009. ... Respondents

(R – 4 suo motu impleaded vide order
dated 13.04.2023 in W.P(MD)No.4923 of 2023)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to revise wages of the petitioner for the period from 01.09.2019 to 31.03.2020 by taking note of the 14th Wage Revision Settlement signed under section 12(3) of the I.D Act dated 24.08.2022 and consequently to pay him arrears of wages for the period from 01.09.2019 to 31.03.2020 and also to revise his terminal benefits including gratuity, Leave Salary, Commutation and Monthly Pension based on the such wages payable to him on the date of his retirement i.e., on 31.03.2020 in terms of the above settlement and accordingly direct the respondents to pay the petitioner, the difference in gratuity, leave salary, commutation and pension along with interest at the rate of 6% per annum within a time frame as fixed by this Court.

For Petitioner	: Mr.A.Rahul
For RR 1 & 2	: Mr.K.Jagadeesbalan Standing Counsel
For R – 3	: Mr.S.C.Herold Singh Standing Counsel
For R – 4	: Mr.M.Prakash Additional Government Pleader

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.Heard the learned counsel appearing on either side and perused the materials available on record.

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. Once in three years, wage revision Settlement is negotiated and entered between the Trade Unions of the Transport Corporation employees and the Managements of State owned Transport Corporations and the Transport Department of the Government of Tamil Nadu. These Settlements govern various service conditions and wage revision of all majorities of employees of 8 State Transport undertakings. Rule 15 of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules deals with the determination of pensionable salary. The pensionable salary according to the Rule shall be the last drawn basic pay. Rule 20A provides payment of Dearness Allowance in addition to the basic pension at the rates that may be determined by the Government of Tamil Nadu.

4.In the 13th Wage Settlement arrived between the Trade Unions and the Government of Tamil Nadu under Section 12(3) of the Industrial Disputes Act, dated 04.01.2018, the pay of all Transport Corporation employees was revised retrospectively from 01.09.2016. It was agreed in Clause 2 of the said Settlement that the rate of Dearness Allowance applicable for Transport Corporation employees shall be 5% from 01.07.2017. It was also agreed that in the future, whenever the rate of Dearness Allowance is revised to the Tamil Nadu State Government Employees, the same rate will be applicable to the Transport Corporation employees as well as Dearness Allowance will be revised from time to time on par with the State Government employees.

5.However, in violation of the said agreement, the Secretary to the Government of Tamil Nadu, Transport Department, passed G.O.(Ms)No.142, Transport (E) Department, dated 26.08.2019, restricting payment of revised pension prospectively instead of from

01.09.2016 and further Dearness Allowance payable to the Transport Corporation employees was freezed at present rates. Challenging the same, a batch of Writ Petitions in W.P(MD)No.1147 of 2020 etc., batch came to be filed. By a common order, dated 02.03.2023 passed in W.P(MD)No.1147 of 2020 etc., batch, this Court was pleased to modify the said G.O by holding that a Government Order cannot overrule the Rules, when the Rules say that the employees are entitled to the benefits immediately after retirement accrued to them by way of 13th wage settlement and the Transport Corporation cannot deny it and retired employees are entitled to revised monetary benefits from the date on which the revised monetary benefits were given to the serving employees. Further, this Court held that the retired employees of Transport Corporation are also entitled to the percentage of the Dearness Allowance as fixed to the in-service employees. After the retirement of the petitioners, 14th Wage revision settlement, dated 24.08.2022 was signed between the representatives of the State Government, State-owned Transport undertakings and Trade Unions. The said Settlement provided for retrospective wage revision from 01.09.2019 for all the Transport Corporation employees notionally. Clause (1) of the settlement provides for an increase in wages at the rate of 5% of basic pay drawn as on 31.08.2019 and the same shall be computed by applying the pay matrix enclosed in Annexure 1 of the said pay Settlement. It was further agreed in Clause I that the difference in wages shall be paid as per the new revision of pay scales from 01.01.2022 after adjusting the interim relief amount of Rs.1,000/- which was paid every month from 01.02.2021. Clause 2 of the said Settlement provides for paying Dearness Allowance at the existing rates based on revised basic pay. However, in the meanwhile, on 17.02.2023, the impugned Government letter was issued by the Secretary of the Government of Tamil Nadu, Transport Department, restricting the payment of revised pension prospectively and freezing Dearness Allowance at the present rates and in so far as not giving any direction to the Transport Corporation to disburse the other terminal benefits namely difference in Gratuity, the difference in leave salary and difference in commutation. Challenging the same, these Writ Petitions came to be filed.

6.The learned standing counsel appearing for the respondent Transport Corporation submitted that the respondent Transport Corporation had no objection to disburse the difference in terminal benefits, namely Gratuity and leave salary based on the revised wages.

7.The learned counsel appearing for the respondent Administrator has filed a counter-affidavit and vehemently submitted that the petitioners are entitled to payment of revised pension prospectively from the date of the impugned order ie., from 17.02.2023 and as far as arrears of pension difference is concerned, the learned counsel submitted that the same is payable only from 01.01.2022 in terms of Clause 37(ஆ) of the 14th Wage Settlement dated 24.08.2022.

8.However, this Court is of the considered view that the matter in this Writ Petition is squarely covered by the order passed by this Court in ***W.P(MD)No.1147 of 2020 etc., batch, dated 02.03.2023 [Pokkuvarathu Kazhaka Ovyu Petra Aluvalar Nala Sangam and another Vs. The Principal Secretary to Government and others]*** and the relevant portion of which is extracted as follows:-

> *"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.

.....

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 subparagraph (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."*

9.Though it is necessary that a Wage revision Settlement has to be arrived at once in three years, there was a delay in arriving at a Wage settlement under Section 12(3) and the 14th Wage Settlement was arrived between various stake holders only on 24.08.2022. In the case mentioned supra, it has been held that a Government order cannot overrule the Rules. However, vide the impugned letter, dated 17.02.2023, certain conditions have been made and the said exercise is not legally sustainable.

10.A Government letter cannot overrule the Rules when the rules say that the employees are entitled to the benefits immediately after retirement. The employees who worked in the respondent Transport Corporation who have retired between 01.09.2019 and 31.07.2022 are entitled to receive revised monetary benefits from the date on which revised monetary benefits were given to the working employees under 14^{th} Wage Settlement.

11.The learned counsel for the respondent Administrator submitted that the pension has been revised from the date of the impugned order.

12.However, such an argument is not sustainable in view of the fact that pension has been revised in terms of 14^{th} Wage Settlement and Rule 15 of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules, the pensionable salary shall be the last drawn basic salary and it has been fairly conceded by the learned counsel that the last drawn basic salary has been revised in terms of 14^{th} Wage Settlement. Hence, to that extent, the impugned letter is modified and the difference in the revised pension is payable from the date on which the revised monetary benefits were given to the working employees till the date of the impugned order. Further, with regard to the Dearness Allowance, the retired employees are entitled to percentage of the Dearness Allowances as fixed by the State Government to the in-service Employees. The respondents are directed to calculate the difference in gratuity and leave salary from the date of retirement. The respondents are directed to calculate the arrears of pension payable to the petitioners and settle the entire benefit, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

13.The Writ Petitions are disposed of in the above terms. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

04.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1.The Managing Director,
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(Kumbakonam) Limited,
No.27, Railway Station New Road,
Kumbakonam.

2.The General Manager,
The Tamil Nadu State Transport Corporation
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4.The Secretary to Government,
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L.VICTORIA GOWRI, J.

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