



W.A.(MD)No.1240 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	23.08.2023
Date of Judgment	13.09.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.(MD)No.1240 of 2023

and

C.M.P.(MD)No.9297 of 2023

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

2.The Managing Director,
State Express Transport Corporation,
Thiruvalluvar House,
No.2 Pallavan Salai,
Chennai-600 002.

3.The Managing Director,
Tamil Nadu State Transport Corporation (CBEU) Limited,
37, Mettupalayam Road,
Coimbatore 641 043.

: Appellants/Respondents 3 to 5

Vs.

1.Pokkuvarathu Kazhaka Oyvu Petra Aluvalar Nala Sangam,
Kovai,
(Regd.No.269/2011)
Rep. by its Authorised Person,
Mr.Alagarsamy,
No.5/58, NGO Colony,
Dindigul-624 005.



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2.K.Singaram

: Respondents 1 & 2/Petitioners

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

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

: Respondents 3 & 4/Respondents 1 & 2

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 02.03.2023 made in W.P.(MD)No.1147 of 2020 on the file of this Court.

For Appellants : Mr.R.Baskaran
Additional Advocate General
assisted by
Mr.S.C.Herold Singh

For Respondents : Mr.M.Ajmalkhan for R1
Senior Counsel
for M/s.Ajmal Associates

J U D G M E N T

D.BHARATHA CHAKRAVARTHY, J.

A. The Appeal:

This Writ Appeal is filed to set aside the order passed by this Court dated 02.03.2023 made in W.P(MD)No.1147 of 2020.



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B. Brief Facts Leading to the Appeal:

2. The brief facts leading to the filing of the present writ appeal are as follows:

The Government of Tamil Nadu constituted 7th Pay Commission to revise the pay of its employees and accepted the recommendations of the commission and implemented the same by framing Tamil Nadu Revised Pay Rules 2017 in exercise of its powers conferred by the proviso to Article 309 of the Constitution of India, vide G.O.Ms.No.303, dated 11.10.2017. Thereafter, the Government issued G.O.Ms.No.319 dated 26.10.2017 by which it considered the question of extension of the said benefits of revised pay to the State Public Sector Undertakings/Statutory Boards and the Government directed that the orders be extended to the employees of these State Public Sector Undertakings/Statutory Boards subject to the conditions mentioned therein. It is necessary to extract the relevant condition No.V(a) and (b) in the said Government Order:

“(v) shall place the above subject before the Board of Directors duly analyzing:-

(a) the financial position, pay structure prevailing for taking a decision and make its recommendations as to whether the revised Levels of Pay for their employees should be made applicable with prospective effect or retrospective effect (i.e.



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Notionally from 01.01.2016 and with monetary benefit from 01.10.2017) or later;

(b) financial implications with reference to the ability of the Public Sector Undertakings/Statutory Boards to meet the additional financial commitment from out of their internal generation of funds and where the internal generation of funds are not very comfortable, the Board may take a view with regard to the date of giving effect to the implementation of pay revision or postponement of pay revision to a future date;”

2.1. Thus, it can be seen that the Government while deciding to extend the benefits to the State Pubic Sector Undertakings, left it to the Board of Directors to consider the financial position and implement the revised pay notionally from 01.01.2016 and with monetary benefit from 01.10.2017 or later and the board was also given the power to implement the pay revision/postponement of pay revision even to a future date. Thereafter, each and every transport corporation placed the matter before their respective Board of Directors and all the corporations had resolved to adopt the G.O.Ms.No.303 and G.O.Ms.No.319, subject to the conditions that may be prescribed by the Government, with effect from 01.01.2016 and the monetary benefit with effect from 01.10.2017 subject to the approval of the Government as recommended by the Audit Committee. For approving the same, thereafter, the Government in G.O.Ms.No.134, dated 09.04.2018



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passed orders extending the Tamil Nadu Revised Pay Rules 2017 and applicable allowances to the employees of the State Transport Undertakings with a only condition that the entire financial commitment should be borne by the Corporation and they should not seek financial assistance from the Government. It was also directed to consider the possibility of reducing the additional manpower cost by manpower rightsizing. Thereafter, the Pension Fund Trust also issued a circular dated 09.05.2018 regarding the implementation of the revised pay scales. Regarding the modality of implementation in respect of the members of the first respondent, namely the pensioners, an expert committee was also constituted. It submitted its recommendations on 15.04.2019. It is at this stage that the Administrator of the Tamil Nadu State Transport Corporation Employees Pension Fund Trust *vide* its communication dated 07.05.2019 addressed to the Government with reference to the pensioners of the State Transport Undertakings, proposing to implement the same with prospective monetary benefit and also to continue the dearness allowance without any change. The relevant Clause 3 of the Government order is extracted hereunder for ready reference :

“3.After careful examination, the Government have decided to accept the proposal of the Administrator, Tamil Nadu State Transport Corporation Employees Pension Fund Trust, based on the recommendations of the Official Committee ad ordered as follows:-



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(a) *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.*

(b) *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.*

(c) *Dearness Allowance at present rates shall be continued without any change.*

(d) *The entire financial commitment likely to arise on such revision shall be incurred by the Tamil Nadu State Transport Corporation Employees Pension Fund Trust without seeking any financial assistance, in any form, from the Government.”*

(emphasis supplied)

2.2. Aggrieved by the above Government Order, the first and second respondents filed the writ petition in W.P.(MD)No.1147 of 2020 challenging the above said conditions of the Government Order inasmuch as the pay benefit which is originally granted from 01.10.2017 is now ordered to be granted prospectively and the rate of dearness allowance was ordered to be continued without any change.



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C. The Order In The Writ Petition:

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3. The learned Single Judge considered the issue and found that in view of Rule 20A of the Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules, which makes the rates of dearness allowance determined by the Government of Tamil Nadu to be applicable to the pensioners, by way of an executive order the same cannot be taken away. The learned Single Judge also found that when the committee constituted with respect to the pensioners have gone into the matter and has recommended the implementation of the revised pay in respect of the pensioners, modifying the benefit as prospectively is incorrect and allowed the writ petition by modifying the impugned Government Order in respect of the above conditions.

3.1. Though the Government order is passed by the respondents 3 and 4 herein, they have not chosen to file any appeal. The appeal is filed on by the Administrator of the Tamil Nadu State Transport Corporation Employees Pension Fund Trust and the Managing Directors of the State Express Transport Corporation.



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D. The Submissions:

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4. Heard *Mr.R.Baskaran*, the learned Additional Advocate General appearing on behalf of the appellants and *Mr.M.Ajmalkhan*, the learned Senior Counsel appearing on behalf of the respondents.

4.1. *Mr.R.Baskaran*, the learned Additional Advocate General placing reliance upon the Clause 5(b) of G.O.Ms.No.319 would submit that the said Government order itself clearly enables the concerned Public Sector Undertakings to apply the revision of pay with prospective effect or later and even permits postponement of pay revision to a future date. In that view of the matter, when the Administrator of the Tamil Nadu State Transport Corporation Employees Pension Fund Trust had taken up the issue with the Government, especially when there is lack of funds, the Government Order cannot be faulted with. He would further submit that the employees of the State Transport Corporations though periodically been extended the benefit regarding pay revision etc., cannot automatically claim the benefit. In that view of the matter, when Rule 20-A of the Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules state that the dearness allowance shall be at the rates fixed by the Government, it is the Government by the impugned Government Order in G.O.Ms.No.142 has



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ordered that the dearness allowance at the present rates shall be continued. Therefore when the employees have no corresponding right, no fault whatsoever can be attributed to the Government Order. He would further submit that the earlier Government Orders did not consider the application in respect of the pensioners and therefore, the Government is entitled to apply different yardstick to pensioners.

4.2. *Mr.M.Ajmalkhan*, the learned Senior Counsel appearing on behalf of the respondents, pointing out to the expert committee report would submit that it can be seen from the sequence of events that originally when the Government framed Revision of Pay Rules vide G.O.Ms.No.303, and later on extended it to the Public Sector Undertakings vide G.O.Ms.No.319 it was made conditional upon the Board of Directors approving and adopting with or without modifications. Therefore, when the Government itself had invested the right with the concerned Boards and the Boards had passed resolutions specifically adopting the pay revision with a same date as that of the Government servants namely revision with effect from 01.01.2016 and monetary benefit with effect from 01.10.2017, there was no question of reconsideration of the issue at the request of the Administrator of the Tamil Nadu State Transport Corporation Employees Pension Fund Trust. He would further submit that when the Government had by the G.O(Rt).No.32,



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dated 12.02.2019 constituted an expert committee to go into the issues which included the financial status of the trust, and when the expert committee had specifically suggested that the revised pay has to be fixed even in respect of the retired employees and considered the financial position as improved, the pensioners shall be paid the pension arrears with effect from 01.10.2017, without even referring to the earlier Government Order in G.O.Ms.No.134, the government simply passed a diametrically opposite order denying the financial benefits and freezing the dearness allowance. He would submit that freezing of the dearness allowance which is done by an executive order, is contrary to the Statutory Rule 20-A referred above. He would submit that considering the fact that the committee has categorically recommended the grant of financial benefits and when the Board of Directors have earlier authorised the implementation of the revised pay and allowance with effect from 01.01.2016 and with monetary benefit with effect from 01.10.2017 and when the Government itself has accepted the same and passed orders in G.O.Ms.No.134, the impugned Government Order restricting and taking away the benefits is untenable on the face of it.



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E. The Discussion & Findings :

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5. We have considered the rival submissions made on either side and perused the material records of the case.

5.1. The respondents 1 and 2, the retired employees, are aggrieved by two specific clauses in the impugned Government Order. Firstly, it can be seen from *Rule 20-A* quoted above that the Statutory Rules governing the pension, clearly envisages that the pensioners are eligible for dearness allowance at the rate that would be determined by the Government of Tamil Nadu. It goes without saying that the dearness allowance which is fixed for the Government employees from time to time is made applicable to the pensioners of the Transport Corporations. While that being the position, the impugned Government Order which is an executive instruction cannot override the Statutory Rule. The said clause in the impugned Government Order virtually has the effect of nullifying *Rule 20-A* of the Statutory Rules and as such we have no hesitation in holding that the said clause of the Government Order is invalid.

5.2. As far as extending the revised pay and its benefits are concerned, firstly, it can be seen that it was within the realm of the



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Government to extend or not to extend the revised pay. As a matter of fact, it is the Government which had decided to extend the benefits to the State Public Sector Undertakings vide G.O.Ms.No.319 dated 26.10.2017. As per the above Government Order, it is expressly made clear that while extending, considering the financial position, it can be made applicable with prospective effect or from a future date etc., and the Government specifically directed that the subject be placed before the Board of Directors. The Board of Directors of the State Owned Transport Corporations have categorically resolved to extend the benefit to the employees with effect from 01.01.2016 and the monetary benefit with effect from 01.10.2017 subject to the approval of the Government. The Government in turn had approved the same vide G.O.Ms.No.134 dated 09.05.2018. As a matter of fact, based on the said Government Order, a circular was issued on 09.05.2018 which reads as follows:

“Hence, it is requested to give necessary instruction to revise the pay and pension for the following employees:

(1) The employees covered under 12(3) Wage Settlement and retired/expired/Exist between 01.09.2016 to 31.12.2017.

(2) The Supervisors/Officers eligible for 7th Pay Commission and retired/Expired/Exit between 01.01.2016 to 31.03.2018.

(3) The pay in respect of the above employees shall be revised as per the references cited and the pension shall be revised and the



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proposals ave to be sent to their respective audit centres like Erode, Dindigul and Chennai after proper authentication on or before 31.05.2018. Moreover, the individual wise monthly commitment details to be sent to the TNSTC EPF Trust, Chennai through Hard copy and soft copy (E-mail) before 31.05.2018.”

5.3. Thus it can be clear that even though it was within the realm of the Board of Directors to have postponed the actual financial benefits, they thought it otherwise and consequently even the pension fund trust ordered implementation. When that being so, without even referring to G.O.Ms.No. 134, the impugned Government order in G.O.Ms.No.142, dated 26.08.2019 is issued by restricting the monetary benefit prospectively. In this regard, it is the Government which decided to extend subject to conditions and it is the corporations which expected to extend with or without any modification of the Government Scheme. Once a particular decision of implementing the Revised Pay Rules, is implemented as such granting the benefits retrospectively, then at the time of carrying out of the same, it cannot proclaim one and restrict thereafter. In this regard, useful reference can be made to the Judgment of the Division Bench of this Court in **Tamil Nadu Electricity Board and Another Vs. G.Sethuraman**¹ and Paragraph Nos. 13 and 14 of the said Judgment are extracted hereunder:

¹ Writ Appeal No.3235 of 2004 dt. 04.04.2005



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“13. In an oft quoted passage in *East End Dwelling Co. Ltd v. Finsbury Borough Council*, (1951) 2 All.E.R 587, Lord Asquith observed : -

" If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs"

*The above observation has been quoted with approval by the Supreme Court in several decisions e.g. *Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd.*, AIR 2003 SC 511 (para-33), *C.W.T v. Trustees of H. E.H.*, (2003) 5 SCC 122 (para-20), *Dipak Chandra Ruhidas v. Chandan Kumar Sarkar*, (2003) 7 SCC 66 (para-12), etc.*

14. In the present case, the legal fiction which has been created by order dated 7.6.1996 is that the writ petitioner is deemed to have been retrospectively promoted as Executive Engineer from 9.6.1988. Hence full effect must be given to this legal fiction, and for all purposes we have to treat it as if the writ petitioner had in fact been promoted as Class I officer from 9.6.1988, and our eyes should not boggle half way. For these reasons, we fully agree with the view taken by the learned single Judge in the impugned judgment."

(emphasis supplied)



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Thus it can be seen that in the instant case also, after making a conscious decision implementing the order partly by way of Statutory Rule and partly by way of extending the benefit, at the final lap, the eyes of the Government had boggled. Therefore the same is impermissible.

F. The Result:

6. In that view of the matter, no exception can be taken for the findings and conclusions reached by the learned Single Judge and accordingly, finding no merits, the Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R.,J.) (D.B.C.,J)

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NCC : Yes / No

Index:Yes/No

Index:Yes/No

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Pre-Delivery Judgement made in
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