BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.22269 to 22273 of 2023
and
W.M.P(MD)Nos.18543 to 18547 of 2023

N.Sekar ... Petitioner
(In W.P(MD)No.22269 of 2023)

K.Senthilkumar ... Petitioner
(In W.P(MD)No.22270 of 2023)

D.Marimuthu ... Petitioner
(In W.P(MD)No.22271 of 2023)

K.Krishnasamy ... Petitioner
(In W.P(MD)No.22272 of 2023)

T.Singaravelan ... Petitioner
(In W.P(MD)No.22273 of 2023)

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Finance Department,
Fort St. George,
Chennai-600 009.

2.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Transport Department,
Fort St. George,
Chennai-600 009.

3.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
New Railway Station Road,
Kumbakonam-612 001.

4.The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai-600 002. ... Respondents
(In all the cases)

Common Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records passed by second respondent relating to G.O(Ms)No.142, Transport (E) Department, dated 26.08.2019 and quash the paragraph 3(c) and consequently direct the respondents to revise the percentage of dearness allowance payable to the petitioner on par with dearness allowance revised from time to time for the serving employees of the Tamil Nadu State Transport Undertakings and to pay arrears of revised pension.

(In all the cases)

For Petitioners : Mr.D.Sivaraman

For R-1 & R-2 : Mr.N.Muthuvijayan
Special Government Pleader

For R-3	:	Mr.K.Jegadeesh Balan Standing Counsel
For R-4	:	Mr.S.C.Herold Singh Standing Counsel

COMMON ORDER

These writ petitions have been filed for a Writ of Certiorarified Mandamus, calling for the records passed by the second respondent relating to G.O(Ms)No.142, Transport (E) Department, dated 26.08.2019 and quash the paragraph 3(c) and consequently direct the respondents to revise the percentage of dearness allowance payable to the petitioners on par with dearness allowance revised from time to time for the serving employees of the Tamil Nadu State Transport Undertakings and to pay arrears of revised pension.

2. By consent of both parties, these Writ Petitions were taken up for final disposal at the stage of admission itself.

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 would be negotiated and arrived at between the Trade Unions of the Transport

Corporation Employees and the Managements of the State owned Transport Corporation and the Transport Department of the Government of Tamil Nadu. These settlements governed various service conditions and wage revision of all the employees of the eight State Transport Undertakings.

4. Rule 15 of the Tamil Nadu State Transport Corporation Employees' Pension Fund Trust Rules deals with the determination of pensionable salary. The pensionable salary according to the rule, shall be the last drawn basic pay. Rule 20 A provides payment of dearness allowance, in addition to the basic pension at the rates that may be determined by the Government of Tamil Nadu. In 13th wage settlement arrived between the Trade Unions and the Government of Tamil Nadu under 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. However, in violation to the said agreement, the Secretary to the Government of Tamil Nadu, Transport Department passed G.O(Ms)No.142 of the Transport (E) Department, dated 26.08.2019, restricting payment of revised pension prospectively from 01.09.2016 and further dearness allowance payable to the Transport Corporation employees was freezed at present rates.

5. Challenging the same, Pokkuvarathu Kazhaka Ovyu Petra Aluvalar Nala Sangam filed W.P(MD)No.1147 of 2020, challenging paragraph 3(c) of G.O(Ms)No.142 of the Transport (E) Department, dated 26.08.2019. 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 rule 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 employee. 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. In the above circumstances, the petitioners submitted representations individually on various dates seeking to revise the dearness allowance as per the directions of this Court and pay the arrears. Further the petitioners' made a request to increase the medical allowance from Rs.100/- to Rs.300/- as paid for the Tamil Nadu Government Servants. Despite the receipt of the said representations, the respondents have not taken any steps to implement the rule, Government letter and orders passed by this Court. Hence, these writ petitions came to be filed.

6. This Court is of the considered view that the matter in these writ petitions are clearly covered by the order passed by this Court in W.P(MD)Nos. 1147 of 2020 etc., batch, dated 02.03.2023 and the relevant portion of which is extracted as follows:

> *"8. ....**[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."

7. 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 14th wage settlement was arrived between the various state holders only on 24.08.2022. In the case mentioned *supra*, it has been held that a Government order cannot overrule the rules. Thus, 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 service benefits were given to the working employees under 14th wage settlement.

8. The learned Standing Counsel for the respondent Administrator submitted that the pension has been revised from the date of the impugned order. However, such an argument is not sustainable, in view of the fact that the pension has been revised in terms of 14th wage settlement and Rule 15 of the Tamil Nadu State Transport Employees' Pension Fund Trust Rules, the pensionable salary shall be the last drawn basic salary and it has been fairly conceded by the learned Counsel for the petitioner that the last drawn basic salary has been revised in terms of the 14th wage settlement. Hence, to that extent, the difference in 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. However, with regard to the dearness allowance, the retired employees are entitled to the percentage of dearness allowance as fixed by the State Government to the in-service employees.

9. This Court is duty bound to observe that the respondents have preferred an appeal in W.A(MD)No.1240 of 2023, dated 13.09.2023 as against the order passed by this Court in W.P(MD)No.1147 of 2020, dated 02.03.2023 and the same was also dismissed and the relevant portion of which is extracted as follows:

> *"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*** *and Paragraph Nos.13 and 14 of the said judgment are extracted hereunder:*

"13. In an oft quoted passage in East End Dwelling Co. Ltd Vs. 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 Vs. Palitana Sugar Mills Private Limited, AIR 2003 SC 511 (para-33), C.W.T Vs. Trustees of H.E.H., (2003) 5 SCC 122 (para-20), Dipak Chandra Ruhidas Vs. 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 07.06.1996 is that the writ petitioner is deemed to have been retrospectively promoted as Executive Engineer from 09.06.1988. <u>Hence full effect must be given to this</u>

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 09.06.1988, 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)

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."

10. In view of the same, this Court is inclined to quash the paragraph 3(c) in G.O(Ms)No.142 of the Transport (E) Department, dated 26.08.2019 passed by the second respondent and consequently direct the respondents to revise the percentage of dearness allowance payable to the petitioners on par with dearness allowance revised from time to time for the serving employees of the Tamil Nadu State Transport Undertakings and to calculate the arrears of pension payable to the petitioners and settle the entire benefits within a period of twelve (12) weeks from the date of receipt of a copy of this order.

11. These writ petitions stand disposed of in the above terms. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

13.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The Principal Secretary to Government,
The State of Tamil Nadu,
Finance Department,
Fort St. George,
Chennai-600 009.

2.The Principal Secretary to Government,
The State of Tamil Nadu,
Transport Department,
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L.VICTORIA GOWRI, J.

BTR

W.P.(MD).Nos.22269 to 22273 of 2023

13.09.2023