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W.P.No.986 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.986 of 2022
W.M.P.No. 1049 of 2022

R.Veeramani

... Petitioner

Vs

1. Government of Tamilnadu
Rep. by its Principal Secretary,
Transport Department,
Fort St. George, Chennai-1.
2. Tamilnadu State Transport
Corporation (Villupuram) Ltd.,
Rep. by its Managing Director,
3/137, Salamedu,
Villupuram – 605 401.
3. The General Manager,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
3/137, Salamedu,
Villupuram – 605 401.
4. Tamil Nadu State Transport Corporations
Employees' Pension Fund Trust,
Rep. by its Administrator,
Thiruvalluvar Illam, Pallavan Salai,
Chennai – 2.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order in G.O.Ms.No.142, Transport (E) Department dated 26.08.2019, passed by the first respondent, quash the same insofar as denying and depriving monetary benefits/arrears of difference in pension from the date of the petitioner's retirement to the date of the order and insofar as freezing the rate of dearness allowance payable as on the date of G.O., and consequently direct the respondents to pay him the difference in gratuity and earned leave salary; to pay him the arrears of difference in pension for the period from 01.05.2017 to 30.09.2018; to pay him the difference in dearness allowance from 01.05.2017, based on the rate of dearness allowance as applicable and as revised to the serving employees/workmen, with arrears and to pay interest at the rate of 12% per annum for all the above benefits, within a specified time as may be fixed by this Court, award costs.

For Petitioner : Mr.V.Ajoy Khose
For Respondents
For R1 : Mr.E.Vijay Anand
Additional Government Pleader
For R2 to R3 : Ms.Pavithra
Standing Counsel

ORDER

This writ petition has been filed challenging the government order in G.O.Ms.No.142, Transport (E) Department dated 26.08.2019, passed by the first respondent.



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

3. The similar issue has already been dealt with by the Madurai Bench of this Court in a batch of writ petitions in W.P.(MD).No.1147 of 2020 etc., by an order dated 02.03.2023, which held 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.

16.

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



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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*



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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



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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



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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.”

4. The above judgment squarely applicable to the case on hand. Accordingly, the respondents are directed to calculate the arrears of pension payable to the petitioner and settle the entire benefits, with applicable interest within a period of twelve weeks from the date of receipt of a copy of this Order.



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5. With the above directions, the Writ Petition stands allowed.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

02.07.2024

Index : Yes/No

Speaking/Non Speaking order

Neutral Citation : Yes/No

rts

To

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2. The Managing Director,
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