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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2024

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN**

L.P.A.No.1 of 2023 and CMP.Nos.3144 of 2023

and

L.P.A.No.2 of 2023

L.P.A.No.1 of 2023

K.Bhama ... Appellant
Administrator,
Tamil Nadu State Transport Corporation,
Employee's Pension Fund Trust,
Thiruvallurvar House, Pallavansalai,
Chennai – 600 002.

Vs.

1.The State Transport and Transport
Corporations Retired Employees
Welfare Association (Regn No.127/2001)
Pallavansalai, Chennai – 600 002.
rep. by its President A.Raymond.

2.P.W.C.Davidar IAS
Addl., Chief Secretary to Govt.,
Transport Department,
Secretariat, Fort St.George,
Chennai – 600 009.

3.Arasu Pokkuvarathu Kazhaga



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Pensioner Nalasangam, Reg.No.75/2021

Represented by its President

D.Kathirsan,

Nehru Nagar, Madurai,

Residing at No.36, Kalaimahal Street,

Bye-pass road, Madurai 625 016.

4.Tamil Nadu Arasu Pokkuvarathu Kazhaga

Oyyvu Petra Paniyaalargal Nala

Sangangalin Peravai,

(Regd.No.SRG/Chennai South/500/2021)

Rep.by its General Secretary,

No.70, S1, Sakthi Apartment, Devarajan Street,

Pammal, Pallavaram, Chennai – 600 075.

5.Pokkuvarathu Kazhaka Oyvu Petra

Aluvalar Nala Sangam, Kovai,

(Regd.No.269/2011)

Rep.by its Secretary,

K.S.Shanmuga Velayutham,

B-25, Cheran Colony, Thudiyalur Post,

Coimbatore – 641 034.

...

Respondents

L.P.A.No.2 of 2023

The Additional Chief Secretary to Government

Transport Department, Secretariat,

Fort St.George, Chennai – 600 009.

...

Appellant

Vs.

1.The State Transport and Transport

Corporations Retired Employees



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Welfare Association (Regn No.127/2001)
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Rep.by its Secretary,
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B-25, Cheran Colony, Thudiyalur Post,
Coimbatore – 641 034.

... Respondents

PRAYER: These letters patent Appeals have been filed under Clause 15 of Letters patent against the order dated 02.09.2022 passed in Sub.Appl.No.98 of 2019 in Cont.P.No.830 of 2014 in W.P.No.34530 of 2012.

L.P.A.No.1 of 2023

For Petitioner ... Mr.C.S.K.Sathish



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For Respondent No.1	...	Mr.G.Sankaran Senior Counsel for Mr.S.Nedunchezhiyan
For Respondent No.2	...	Mr.T.Arun Kumar Additional Govt. Pleader
For Respondent No.3	...	Mr.Vijay Narayan Senior counsel for Mr.C.Vigneswaran
For Respondent No.4	...	Mr.K.Srinivasamurthy for Mr.M.Gnanasekar
For Respondent No.5	...	Mr.D.Soundar Raj

L.P.A.No.2 of 2023

For Petitioner	...	Mr.T.Arun Kumar Additional Govt. Pleader
For Respondent No.1	...	Mr.G.Sankaran Senior Counsel for Mr.S.Nedunchezhiyan
For Respondent No.2	...	Mr.C.S.K.Sathish
For Respondent No.3	...	Mr.Vijay Narayan Senior counsel for Mr.C.Vigneswaran



For Respondent ... Mr.D.Soundar Raj
No.4

COMMON ORDER

(Order of the Court is made by S.M.SUBRAMANIAM, J.)

The Letters Patent Appeals on hand have been instituted to assail the order dated 02.09.2022 passed in sub-application No.98 of 2019 in contempt petition No.830 of 2014 in W.P.No.34530 of 2012.

2.The genesis of the lis arose pursuant to the order dated 08.11.2013 passed in W.P.No.34530 of 2012. The said writ petition was filed by the State Transport and Transport Corporations Retired Employees Welfare Association for issuing a writ of mandamus to direct the respondents therein to consider the representation made by the petitioner's association dated 03.04.2012 for amendment of Rule 20 (A) of Tamil Nadu Pension Fund Trust Rules or to revise the procedure to enable the petitioners/ family pensioners of State Transport undertakings to avail the benefits of enhancement of dearness allowance as and when the orders were passed by the State Government and to make the payment of arrears of pensionary



benefits, so far, not paid based on enhanced dearness allowance and other allowance including medical/Health allowances, etc., within the time frame to be fixed by the writ court.

3.The Writ Court passed final order on 08.11.2013 as follows:

“11.Under such circumstances, the 2nd respondent herein is directed to consider this issue and forward a proposal to the State Government, namely, the 1st respondent , to amend Rule 20(A) of Tamil Nadu State Transport Corporation Employees' Pension Fund Trust Rules for payment of Dearness Allowance at Government rates to the pensioners/family pensioners of state Transport Undertakings immediately and on receipt of the same, the 1st respondent will consider the same in accordance with law and pass necessary orders thereon. Anyhow, the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

12.With the above observation, the writ petition is disposed of. No costs.”



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4.The order above reveals that a direction was issued to the respondents therein to consider the representation made by the writ petitioner's association in accordance with law and pass necessary orders within a period of eight weeks from the date of receipt of a copy of that order.

5.In pursuance to the direction issued by the writ Court in W.P.No.34530 of 2012, the Principal Secretary to Government, Transport (E) Department, in letter No.19040/E/2013-1 dated 13.08.2014 disposed of the representation stating that “the Government carefully examined the representation of petitioner as per the order of the Hon'ble High Court of Madras in W.P.No.34530 of 2012 and ordered that there is already a clear provision in Rule 20 (A) of Tamil Nadu State Transport Corporation Employees' Pension Fund Trust Rule, which states that in addition to basic pension, the pensioners are eligible for nominal Dearness Allowance at the rates that may be determined by the Government of Tamil Nadu. The above system is followed without any deviation. The same system will be adopted in future also”.



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6. Acceding to the request made by the State Transport and Transport Corporations Retired Employees Welfare Association, the Government passed orders stating that the dearness allowance as applicable will be adopted and the system will continue in future also.

7. In our considered view that the writ order has been implemented by the Government in its letter dated 13.08.2014 and there is no further cause for any proceedings with reference to the final order passed in W.P.No.34530 of 2012 dated 08.11.2013.

8. However, not satisfied with the Government Order passed on the representation submitted by the State Transport and Transport Corporations Retired Employees Welfare Association in letter dated 13.08.2014, the association filed contempt petition No.830 of 2014. When the contempt petition was taken up for hearing by the learned single judge of this Court, an affidavit was filed by the Administrator of Tamil Nadu State Transport Corporation Employees Pension Fund Trust referring the letter of the



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Government dated 13.08.2014. Hence, the learned Single Judge of this Court closed the contempt petition with a finding that there is no wilful disobedience of the order passed by the Writ Court in W.P.No.34530 of 2012.

9.At this juncture, it would be relevant for us to consider whether there is any scope of further proceedings in respect of the final order passed in W.P.No.34530 of 2012. The writ relief sought for by the State Transport and Transport Corporations Retired Employees Welfare Association is to direct the respondents to consider the representation and such a direction was issued by the writ Court by order dated 08.11.2013 and pursuant to the said order, the Government in its letter dated 13.08.2014 states that the pensioners are eligible for nominal dearness allowance at the rates that may be determined by the Government of Tamil Nadu. The said system being followed will be followed in future also. Accordingly, contempt petition No.830 of 2014 was also closed. Therefore, we do not find any reason to entertain any further sub application for reopening of the contempt proceedings.



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10.However, the State Transport and Transport Corporations Retired Employees Welfare Association filed sub application No. 98 of 2019 in contempt petition No.830 of 2014 to reopen the contempt petition in C.P.No.830 of 2014 dated 09.12.2014.

11.The learned single judge of this Court elaborately considered the issues raised by the State Transport and Transport Corporations Retired Employees Welfare Association regarding their entitlement to payment of dearness allowance in the said application and disposed of the application with a direction to pay the enhanced dearness allowance to the State Transport and Transport Corporations Retired Employees. Since the same involving two or three departments, namely, The Transport Finance and Expenditure Department, it will require some time for the Government to disbursement of the same. Accordingly, the respondents are directed to pay the enhanced dearness allowance to the State Government Transport Retired Employees prospectively with effect from November, 2022 onwards and to file a compliance affidavit.



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12.The appellants in the present L.P.As would mainly contend that the positive directions issued by the learned single Judge in a sub application filed to reopen the contempt is beyond the scope of the contempt petition itself and therefore, the said order is liable to be set aside.

13.Primarily, we found that the writ petition itself is filed to consider the representation. Final order in the writ petition was passed directing the Government to dispose of the representation. The Government disposed of the representation stating that the pensioners are eligible for nominal dearness allowance at the rates that may be determined by the Government of Tamil Nadu. Thereafter, the contempt was filed and the contempt petition was closed on the ground that the Government disposed of the representation and an affidavit was filed by the Administrator of Pension Trust.

14.The respective learned senior counsel appearing on behalf of the respondents Mr.Vijay Narayan and Mr.M.Sankaran would submit that



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the affidavit filed in the contempt petition by the Administrator shows that the enhanced dearness allowances will be paid to the pensioners and therefore, the learned single judge in the sub application directed the authorities to pay the said dearness allowances. We are unable to agree the said contention in view of the fact that it is beyond the scope of the writ order and the implementation order passed by the Government.

15.The learned counsel Mr.Sathish appearing on behalf of the respondent would contend that the affidavit filed in the contempt proceedings by the Administrator was disputed and further subsequent affidavit was filed in the present L.P.As stating that the appellants would pay the dearness allowance as admissible and determined by the Government of Tamil Nadu and the system existing will be followed in future.

16.Even presuming an affidavit has been filed by the Administrator in a contempt proceedings, the Courts are not expected to adjudicate the issues on merits a fresh in sub application. The scope of



contempt proceedings cannot be expanded for the purpose of adjudication of the issues on merits. However, in the present case, the contempt petition itself was closed on the ground that the Government disposed of the representation submitted by the State Transport and Transport Corporations Retired Employees Welfare Association and if at all any grievance existed during the relevant point of time, the Association ought to have raised it in an appropriate manner and not by filing sub application to reopen the contempt petition.

17. Even in respect of the order impugned, the prayer sought for in the sub application is to reopen the contempt petition in C.P.No.830 of 2014. However, the learned single judge proceeded by adjudicating the entire issue relating to payment of dearness allowance and the dearness allowance in the order and finally directed the appellants herein to pay enhanced dearness allowances to the State Government Transport Retired Employees prospectively with effect from November, 2022 onwards. In our considered opinion is not only beyond the scope of the writ order, but also and the implementation order passed by the Government.



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18.Regarding the writ proceeding instituted seeking the relief to consider the representation, the writ Courts have to consider, whether right of the writ petitioner is established or infringement of any right has been established. In the absence of any right, no writ would lie. Routine order of considering the representation would do no service to the cause of justice. But the litigants are back again by filing another writ proceedings, which will result in multiplicity of proceedings than redressing the genuine grievances of the litigants.

19. To sum up, the State Transport and Transport Corporation Retired Employees Welfare Association filed a writ petition seeking consideration and disposal of their representation. This Court directed the authorities to consider the representation, and subsequently the Government passed orders considering the representation and communicated the said order. The Government in its order said that the Dearness Allowance (DA) and other allowance as fixed by the Government will be paid to the retired employees of the Corporation.



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20. The Association then filed a contempt petition, which was closed by the Court considering the Government's order. Thereafter, the Association filed sub application to reopen the contempt petition. In this reopening petition, the Learned Single Judge issued a direction, directing the respondents to enhance the DA to the retired employees of Transport Corporation positively with effect from November, 2022. However, in our opinion, such relief could not be granted in a sub application filed to reopen the contempt petition.

21. Thus, we are inclined to interfere with the order under challenge in the present petition. Consequently, the impugned order dated 02.09.2022 passed in Sub Application No.98 of 2019 in Contempt Petition No.830 of 2014 in W.P.No.34530 of 2012 is set aside, and L.P.A.Nos.1 and 2 of 2023 are allowed. However, we made it clear that the present order will not stand in the way of the retired employees to redress their grievances in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.



Index : Yes

Speaking order : Yes

Neutral Citation : Yes

sms/jeni

[S.M.S., J.] [M.J.R., J.]

08.11.2024

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