IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	4/10/2023
Delivered on	7/2/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition Nos.19960 and 19961 of 2011

M.Ramamurthy ... Petitioner in W.P.No.19960 of 2011

R. Sankaran ... Petitioner in W.P.No.19961 of 2011

Vs

1. The Government of Tamil Nadu
   rep. By the Secretary to Government
   Transport Department
   St. Fort George
   Chennai 600 009.

2. The Tamil Nadu State Transport Corporation
   (Villupuram) Ltd
   rep. By its Managing Director
   Villupuram 605 401.

3. The Tamil Nadu State Transport Corporation
   Employees Pension Fund Trust
   rep. By its Administrator
   State Transport Corp. Office
   Pallavan Salai
   Chennai 600 002. ... Respondents in both the petitions

PRAYER in W.P.No.19960 of 2011: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus to direct the respondents to pay the difference in arrears of leave salary and gratuity on the basis of the revised pay and recommendations of VI Pay Commission recommendations accepted by the respondents and as per G.P.Ms.No.235 Finance (Pay Cell) Department dated 1/6/2009 read with Government letter No.206 dated 25/8/2010 and interest thereon.

PRAYER in W.P.No.19961 of 2011: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents to pay the difference in gratuity on the basis of G.O.Ms.No.235 Finance (Pay Cell) Department dated 1/6/2009 read with G.O.Ms.No.206 dated 25/8/2010 with penal interest and interest on the delayed payment of commutation of pension and award exemplary costs.

For petitioners	...	Ms.S.Meenakshi
For respondents	...	Mr.C.Sangamithirai Special Government Pleader for R.1 Mr.M.Ashwin for C.S.K.Sathish Standing Counsel for R.R.2 and 3

COMMON ORDER

These Writ Petitions are filed to direct the respondents to pay difference in gratuity on the basis of G.O.Ms.No.235 Finance (Pay Cell) Department dated 01.06.2009 read with Government letter No.206 dated 25.08.2010 with the penal interest and interest on the late payment of Commutation of Pension and to award exemplary costs.

2. Facts in brief which are necessary for the disposal of these writ petitions are as follows:-

The petitioners were employed as Section Officers, in the Tamil Nadu State Transport Corporation (Second Respondent Corporation) and retired from service on 30/9/2009 and 30/4/2010, respectively. At the time of retirement, they were paid Rs.3.5 lakhs each towards gratuity. G.O.Ms.No.250 dated 17/6/2009 grants the revised scale of pay to the Transport employees with effect from 17/6/2009. Since the petitioners were in employment on 17/6/2009, they are entitled to the said pay revision. Hence, they sought for enhancement of gratuity amount of Rs.10 lakhs from Rs.3.5 lakhs. But, the respondents did not implement the revision till

G.O.Ms.No.63 dated 5/2/2010 was issued. Hence, the petitioners have come forward with the present writ petitions.

3. The respondents have filed the counter affidavit signed by the Managing Director, The Tamil Nadu State Transport Corporation. The contents of which in brief are that the petitioners were initially employed as a Junior Assistant, upgraded as Assistant, Senior Assistant and then promoted as Superintendent, then Senior Superintendent and finally promoted as a Section Officers, a supervisory cadre in the Administrative Department, and after retirement have received Rs.3.50 lakhs each as service gratuity as the maximum sealing of the service gratuity as on the date of retirement of the petitioner on 30.04.2010 was Rs.3.50 lakhs. The amendment for enhanced gratuity came into force with effect from 24.05.2010 as per amendment in the payment of gratuity (Amendment Act, 2010) Act 15 of 2010.

4. It is further mentioned in the counter affidavit that the petitioner has misunderstood the provision of G.O.Ms.No.234 Finance Department dated 01.06.2009 and G.O.Ms.No.235 Finance dated 01.06.2009 which were issued only for revision of pay scales and allowances and pensions to the

Government servants. G.O.Ms.No.234 and 235 dated 01.06.2009 do not mention about the second respondent corporation. However Government vide G.O.Ms.250, Finance dated 17.06.2009 has made the said G.O applicable to the public sector undertakings. It is also mentioned further, Government has issued another G.O.No.63 of Transport Department dated 05.02.2010, in favour of the managing cadre officer and technical and administrative supervisory employees of STU for implementation of Tamil Nadu revised scale of pay. However there is no mention about the pensionary benefits as applicable to the Government employees. The letter No.206 dated 25.08.2010 is only a clarification in respect of revision of pension and that letter did not specifically mention about the payment of gratuity. It is also stated that under Tamil Nadu State Transport Corporation Employees Fund Pension Trust rules, the petitioner is not eligible for the prayer sought for in the writ petition and sought for dismissal writ petition.

5. Heard Ms.S.Meenakshi, learned counsel for the petitioners, Ms.C.Sangamithirai, learned Special Government Pleder for the first respondent and Mr.M.Ashwin, learned Standing counsel for the respondents.

6. The petitioners who had worked in the second respondent Corporation were retired on 30/9/2009 and 30/4/2010 respectively. They were paid Rs.3.5 lakhs each towards gratuity. The petitioners are seeking enhancement of gratuity amount of Rs.10 lakhs from Rs.3.5 lakhs.

7. The learned counsel appearing for the petitioners submitted that though the petitioners were retired from service on 30/9/2009 and 30/4/2010 respectively, the Government of Tamil Nadu has revised pay scales of the employees with effect from 1/1/2008 as per G.O.Ms.No.234 by issuing a G.O., on 1/6/2009 after adopting the recommendation of VI Pay Commission. The Government of Tamil Nadu has also issued G.O.Ms.No.235 dated 1/6/2009, extending the revised pay scales for calculation of pension and for commutation of pension to the petitioners notionally with effect from 1/1/2006 and monetary benefits w.e.f. 1/1/2007. Therefore, the petitioners who retired from service on 30/9/2009 and 30/4/2010 are entitled for revised pension and commutation of pension as well, notionally from 1/1/2006 and monetary benefit from 1/1/2007. Accordingly, the respondents have also extended those benefits as per G.O.Ms.No.235 to the petitioners.

8. Learned counsel for the petitioners has submitted vehemently that after issuing G.O., concerning adopting the enhanced pay scales to the employees of the second respondent Corporation, the pension and other benefits as per the G.O., were settled and pension and other pensionary benefits were enhanced to the petitioners, thereby, it is submitted that the pensionary benefits also includes the gratuity, thereby, gratuity also required to be enhanced from Rs.3.5 lakhs to Rs.10 lakhs.

9. The dispute arose when the petitioners have claimed enhanced gratuity of Rs.10 lakhs instead of Rs.3.5 lakhs which were paid to them. Clause 2 (ix) of G.O.Ms.No.235 has enchanced the gratuity of Rs.10 lakhs from Rs.3.5 lakhs. The petitioners are not Government employees. They were working in the second respondent Corporation. All the G.Os., that were issued to the Government employees are not directly or automatically applicable to the employees working in the second respondent Corporation. The Government is expected to issue a G.O., implementing the Government orders more particularly the order in respect of the finances including the salaries, enhancement, etc., to the employees of the Corporation in general and the Corporation again has to take a position about adopting the

Government G.O., of revising the pay scales and only then, the employees of the Corporation will get the benefits of the revised pay scales.

10. In 157th Board Meeting of the second respondent Corporation held on 6/7/2010, a Resolution was passed, enhancing the gratuity amount of Rs.10 lakhs from Rs.3.5 lakhs to those who have left the service on or after 24/5/2010. Admittedly, the petitioners were retired much prior to the said date. It is also made it clear in the said Resolution that enhanced gratuity will be paid only to the employees who have left the service on or after 24/5/2010 and those who leave thereafter.

11. As per 2 (p) (ii) (w) of the Tamil Nadu State Transport Corporation Employees Pension Fund, "pensionary benefits" shall mean the pension or service gratuity and family pension and do not include death cum retirement gratuity, applicable to the employees of the Government of Tamil Nadu, which precisely mean though the service gratuity is part of the pensionary benefits, retirement gratuity does not form part of the pensionary benefits. Thereby, the contention raised by the learned counsel for the petitioner that since in the G.O., issued for enhancing the salary and other pensionary benefits, it is specifically mentioned that the enhanced salaries are

applicable to the pensionary benefits still the retirement gratuity does not form part of it.

12.Further, in order to get the enhanced pension, relevant provisions of the Employees Provident Fund are required to be amended. As on the date of retirement of the petitioners i.e., on 30/9/2009 and 30/4/2010, respectively, the applicable pension admittedly to the petitioner was only Rs.3.5 lakhs, as per the provisions of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules. However, subsequent to the retirement, the Board has passed the Resolution on 6/7/2010 and thereafter, amendment was carried out in the relevant Provident Fund Rules. Accordingly, all the employees who retired on or after 24/5/2010 were only made applicable to receive the enhanced pension of Rs.10 lakhs instead of Rs.3.5 lakhs.

13. As already observed, the basis for enhancing the gratuity is a Resolution to be passed by the Board specified the date of its effect and subsequent to its amendment in the relevant Rules. In the case on hand, admittedly, the Board has passed the Resolution dated 6/7/2010, enhancing the gratuity from Rs.3.5 lakhs to Rs.10 lakhs. However, the said Rule was made applicable specifically for the employees who retired on 24/5/2010 and

thereafter, by which they have excluded all the employees who were retired prior to the said date. The petitioners fall in the category of the employees who were excluded specifically.

14. The main contention of the petitioners is that since their salaries have been revised, pensionary benefits have been revised enhanced gratuity also should be given to them. In order to consider passing of this kind of order, the petitioners are expected to challenge the Board proceeding and also the amended provisions of granting of gratuity. As long as they are still in force, the petitioners cannot simply seek for a relief of enhanced gratuity from Rs.3.5 lakhs to Rs.10 lakhs.

15. In view of the above, the petitioners are not entitled for the relief. Accordingly, these writ petitions are dismissed. No costs.

7/2/2024

mvs.

Index: Yes/No

Neutral Citation: yes/No

To

1. The Secretary to Government
   Government of Tamil Nadu
   Transport Department
   St. Fort George
   Chennai 600 009.

Dr.D.NAGARJUN,J

mvs.

Pre-delivery common order in
W.P.Nos.19960 and 19961 of 2011

7/2/2024