IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.08.2024

PRONOUNCED ON : 28.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.4251 of 2023
and W.M.P.No.4302 of 2023

Tamil Nadu Water Supply and
Drainage Board Pensioner's Association,
Rep by its General Secretary,
Rajakumar,
No.41/19, Prasanthi Apartments,
Welcome Colony,
Anna Nagar West Extension,
Chennai – 600 101 ... Petitioner

-Vs-

1. The State of Tamilnadu,
Rep. by its Additional Chief Secretary,
Municipal Administration
and Water Supply Department,
Fort St. George,
Chennai – 600 009.

2. The State of Tamil nadu,
Rep. by its Additional Chief Secretary,
Finance Department,
Fort St. George,
Chennai – 600 009.

3. The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai – 600 005. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the third respondent BP.No.91 dated 18.10.2022 and to quash the same and consequently direct the respondents to release the DA, pay commission and other benefits without differentiating the existing employees and the retired employees in the same department and on par with the other public Section undertaking. *(Prayer amended as per order dated 06.02.2024 in W.M.P.No.1627 of 2024 in W.P.No.4251 of 2023)*

For Petitioner	:	Mr.V.Prakash, Senior Counsel Mr.C.Kanagaraj
For Respondents		
For R1 & R2	:	Mr.P.Kumaresan Additional Advocate General Assisted by Mr.S.Arumugam Government Advocate
For R3	:	Mr.P.V.Giridhar, Senior Counsel For Mrs.Y.Kavitha

ORDER

This writ petition has been filed challenging the board proceedings in BP.No.91 dated 18.10.2022 on the file of the third respondent, thereby issued guideline that the government orders which are extended to State Public Sector Undertaking/Statutory Boards by Finance alone are placed before the Board of Directors for adoption.

2. Initially this writ petition has been filed for declaration declaring that the Section 3 of the Tamil Nadu Water Supply and Drainage Board Act and Regulation 1972 (hereinafter referred to as "TWAD Act") regarding creation and incorporation of the board as null and void. While pending the writ petition, the prayer was amended challenging the board proceeding in BP.No.91 dated 18.10.2022. The petitioner Association is represented by its General Secretary and the General Secretary was originally appointed as Assistant Engineer in the third respondent board and subsequently promoted in various cadre of Engineer and retired as Joint Chief Engineer on 31.12.2008.

3. Sections 2 & 3 of the TWAD Act deals about the creation and incorporation of the board. The service condition will establish common service cadres and service conditions for the staff employed by either the broad and thereupon such staff shall be liable to be posted and transferred to the service by the board. Section 24 says that the power of

government to direct the board to prepare and execute any scheme and issues under Section 33 TWAD Act deals with the government to credit the leave salary and pensionary contributions in respect of the officers and servants transferred to board's service, which is according to the conditions as are application to them under the government on the notified date.

4. Section 34 of the TWAD Act says that the board shall have its own funds may accept loans, grants, subventions, donations from the Central and State governments. Section 39 of the TWAD Act says that the regulation all estimates of income and expenditure of the board to be laid annually and considered before the board. As per Section 58 of the TWAD Act says the pay, allowances, leave, leave salary, pension and other conditions of service may be applicable and expressly provided in these regulations. The members of the petitioner association are the pensioners in the third respondent board. As per Section 70 of the TWAD Act, all the officers and servants of the third respondent board and any person entrusted with the execution of any function under the TWAD Act, shall be deemed to be public servants within the meaning of Section 21 of IPC.

5. While being so, as per G.O.Ms.No.6 Finance (Pension) Department dated 01.01.2022, the first respondent freezed the dearness allowances in the year 2021 up to July to all government employees including teachers, pensioners, family pensioners due to fiscal crisis arising out of Covid-19 pandemic. Accordingly, the first respondent revised the rate of dearness allowance to the State government pensioners/family pensioners upto 31%. As per the letter dated 18.08.2022, issued guideline saying that the government company are not civil servants and they are not entitled to the protection afforded by Article 311 of the Constitution of India.

6. Thereafter, on 23.08.2022, the third respondent issued letter stating that a proposal was sent to the State government to grant the enhanced dearness allowance from 01.06.2022. Accordingly, the third respondent issued proceeding in BP.Ms.No.91 dated 18.10.2022, wherein the government order which are extended to State public sector undertaking/statutory boards and was approved by the State government and was adapted by the third respondent by its resolution No.5.7 dated 30.09.2022 and issued guidelines that the government order which are

extended to State Public Sector Undertaking/Statutory Boards by Finance alone are placed before the board of directors for adoption. Approval of the government is obtained prior to adoption of the government orders which are applicable to government employees unless otherwise it has been specifically mentioned that such orders are applicable to the employees of State public sector undertaking/statutory boards.

7. The learned Senior Counsel appearing for the petitioner submitted that though the petitioner challenged Section 3 of the TWAD Act as illegal, subsequently challenged the third respondent proceeding in BP.No.91 dated 18.10.2022. Now the petitioner restricted its prayer for direction to grant dearness allowance on par with other employees. As per Rule 58 of TWAD Board Service Regulations, the pay and allowances and other conditions of service including pensionary benefits that are applicable to government servants shall mutantis apply to the members of the board service. Accordingly, the members of the petitioner association has been sanctioned with pensionary benefits in accordance with Tamilnadu Pension Rules. Subsequently, the pensioners have been sanctioned with revised dearness allowance in accordance with government order on par with government pensioners without any

deviation.

7.1. Whereas, the present government order on enhancement of dearness allowance 34% can be extended to statutory boards only on adoption by the board after getting approval of government. It is gross violation to the service regulations and in violation of conditions of service of the petitioner's members. The third respondent board has been constituted under the provisions of TWAD Act in conversion of existing public health engineering and municipal works department to carry out government functions relating to effective planning and execution of drinking water supply and sewerage schemes in the State of Tamil Nadu, excluding the areas covered under the Chennai Metropolitan areas. In support of his contention he relied upon the following judgments:-

(i) (1983) 1 SCC 305 – D.S.Nakara and ors Vs. Union of India.

(ii) 2023 Live Law (SC) 214 – State of Orissa & anr Vs. Orissa Khadi and Village Industries Board Karmachari Sangh & anr.

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

9. On perusal of the counter filed by the third respondent and on the submissions made by the learned Additional Advocate General appearing for the third respondent reveal that the third respondent is a statutory body constituted under the Tamil Nadu Water Supply and Drainage Board Act 1970, under the control of the Municipal Administration & Water Supply Department, Government of Tamil Nadu. As per Section 3 of the Tamil Nadu Water Supply and Drainage Board Act 1970, the board shall be a body corporate and have perpetual succession and a common seal and shall by the said name sue and be sued. The third respondent is one of the few autonomous board under the control of the government of Tamil Nadu following the pay scales prescribed to the government employees from time to time. Similar dearness allowance was paid to the pensioners and family pensioners of the third respondent as per the directions and guidelines issued by the government.

10. As per the guidelines issued by the government by its letter dated 18.08.2022, the third respondent issued proceeding in BP.Ms.No.91 dated 18.10.2022. Therefore, the board proceeding has been issued on the basis of the government letter dated 18.08.2022. Since

the third respondent is an autonomous and statutory body, its employees are not entitled to the benefits that given to the State government employees unless it is adopted by the board and approved by the government considering the financial position of the third respondent. The said guidelines are not only applicable to the third respondent and also applicable to other public sector undertakings.

11. As per government order in G.O.Ms.No.6 Finance (Pension) Department dated 01.01.2022, ordered for sanctioning revised rate of dearness allowance with effect from 01.01.2022 at 31% from 17% of basic pension to the State government pensioners and family pensioners. As per guidelines, the said order was placed before the third respondent board on 22.03.2022 and after deliberations, it has observed that the third respondent board is facing financial crisis and as such, request made by the members of the petitioner association to enhance the rate of dearness allowances as per the government order in G.O.Ms.No.6 Finance (Pension) Department dated 01.01.2022, will be considered after the financial position of the third respondent will be improved.

12. Further, the third respondent board resolved and sent

proposal to the government on 22.06.2022 to issue order for sanctioning revised rate of dearness allowance of 31% from 17% of basic pension to the pensioners and family pensioners of the third respondent board. On receipt of the same, the government has called for certain clarification. On receipt of the same the third respondent had sent detailed reply and requested to adopt the revised rate of dearness allowances from 17% to 31%. However, the government by its communication dated 28.09.2022, informed that the government decided to accept the proposal sent by the third respondent subject to the caveat that the third respondent board has to bear the cost from their own funds and shall not seek any government support. Accordingly, the third respondent also passed order by the proceeding dated 29.09.2022, thereby enhanced the rate of dearness allowance from 17% to 31% with effect from 01.10.2022.

13. While being so, the first respondent sent letter dated 18.08.2022, thereby issued guidelines with regard to placing the government order in G.O.Ms.No.6 Finance (Pension) Department dated 01.01.2022, before board of directors for adoption. Accordingly, the government company is not identified with the Union or State but has been placed under a special system of control and conferred certain

privileges by virtue of the provisions contained in Companies Act, 2013. Further the government requested the third respondent to ensure that the government orders which are extended to State Public Sector Undertakings/Statutory Boards by Finance alone are placed before the board of directors for adoption. Further approval of the government is obtained prior to adoption of government orders which are applicable to government employees unless otherwise, it has been specifically mentioned that such orders are applicable to the employees of State public sector undertaking/statutory boards.

14. On receipt of the said government letter, the third respondent placed it before the board and resolved by the resolution dated 30.09.2022 and adopted the above guidelines issued by the government and issued proceeding in BP.Ms.No.91 dated 18.10.2022, which is under challenge in this writ petition. Thereafter revision of the dearness allowance from 17 % to 31% was sanctioned to the pensioners/family pensioners of third respondent from 01.01.2022, in view of the financial crisis.

15. As per the 496th board meeting dated 03.02.2023, it was

resolved to recommend a proposal to the government to revise the rate of dearness allowance to the third respondent's pensioners/family pensioners from 31% to 34% as per the government order in G.O.Ms.No.257 Finance (Pension) Department, dated 18.08.2022, with effect from 01.02.2023. Accordingly by the communication dated 13.06.2023, the government has sanctioned dearness allowance from 31% to 34% and 34% to 38% from the date of issuance of government letter and the same was paid to all pensioners and family pensions with effect from 30.06.2023. Therefore, the revision of dearness allowance as implemented by the third respondent cannot be said that arbitrary.

16. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India reported in ***(2019) 15 SCC 235*** in the case of ***Tamil Nadu Electricity Board Vs. TNEB Thozhilalar Aykkiya Sangam*** which reads as follows :-

> *"24. While considering the grievance of uxage structure or dearness allowances the importance of considering the financial implications wallale preetiting benefits to employees has been noted by the Supreme Court in number of judgments. The Supreme Court in Workmen v Gujarat Electricity Board reported in*

(1969) 1 SCC 266 while dismissing the appeal preferred by the workmen, has confirmed the view taken by the Tribunal which rejected the demand of the employees of the Board for dearness allowance that it should be fixed with the scale prescribed for the Ahmedabad Mill Owners' Association on the ground that the Board does not have the capacity to meet the additional expenditure that would have to be incurred if such demands are acceded to.

25. The Supreme Court in Bengal Chemical & Pharmaceutical Works Lad. V. Workmen reported in (1969) 2 SCR 113 after referring t Kamani Metals & Alloys Ltd. u. Workmen reported in (1967) 2 SCR 463, has laid down that one-hundred per cent neutralisation is not advisable as it will lead to inflation and therefore, dearness allowance is often a little less than one-hundred per cent neutralisation. Explaining the purpose of deamess allowance and that it should depend upon the ability of the employer to bear such burden, the Supreme Court held as under: (Bengal Chemical & Pharmaceutical Works Ltd. v. Workmen, reported in AIR 1969 SC 360)

"(1) Full neutralisation is not normally given, except to the very lowest class of employees.

(2) The purpose of dearness allowance being to

neutralise a portion of the increase in the allowaving, it should ordinarily be on a sliding scale and provide for an increase on the rise in the cost of living and a decrease on a fall in the cost of living.

(3) The basis of fixation of wages and dearness allowance is industry-cum-region.

(4) Employees getting the same wages should get the same dearness allowance, irrespective of whether they are working as clerks or members of subordinate staff or factory workmen.

(5) The additional financial burden which a revision of the wage structure or dearness allowance would impose upon an employer, and his ability to bear such burden, are very material and relevant factors to be taken into account."

17. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India reported in ***(1999) 3 SCC 414***, in the case of ***T.N. Electricity Board Vs. R. Veerasamy***, which held that financial constraint is a valid ground for introducing a cut-off date and took note - of the financial burden that the Board will have to borne if the scheme would be made effective retrospectively. In another judgment reported in ***(2005) 6 SCC 754***, in the case of ***State of Punjab Vs. Amar Nath Goyal***

the Hon'ble Supreme Court of India negatived the contention of the employees that the decision of the Central Government/State Governments to limit the benefit only to certain employees after calculating the financial implications thereon, was irrational or arbitrary and held as under:

> *"28. the final recommendations of the Pay Commission were not ipso facto binding on the Government, as the Government had to accept and implement the recommendations of the Pay commission consistent with its financial position. This is precisely what the Government did. Such an action on the part of the Government can neither be characterised as irrational, nor as arbitrary so as to infringe Article 14 of the Constitution."*

Therefore, the judgments relied upon by the learned Senior Counsel appearing for the petitioner are not helpful to the case on hand.

18. In view of the above discussions, the request of the petitioner to grant of enhancement of dearness allowances from 17% to 31% as per the government order in G.O.Ms.No.6 Finance (Pension) Department, with effect from 01.01.2022, cannot be considered and the writ petition is devoid of merits and liable to be dismissed. Accordingly, the Writ Petition

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

28.08.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

rts

To

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   State of Tamilnadu,
   Municipal Administration
   and Water Supply Department,
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   Chennai – 600 009.

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G.K.ILANTHIRAIYAN. J,

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