IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2024

PRONOUNCED ON : 13.12.2024

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

WP.No.24026 of 2012

1. T.Pandiyan
2. R.Senguttuvan
3. R.Sivalingam
4. N.Meyyappan
5. P.H.A.Jayaraj
6. M.Raju
7. T.Jayaprakash
8. MU.Elangovan
9. K.P.Dhanasekaran
10. R.Jeyaraman
11. Ramasubbu
12. M.Jayababu [deceased]
13. E.Mohan
14. T.Mani
15. M.Shajohan
16. P.Balakrishnan
17. P.Karuppiah
18. R.Mohanakrishnan
19. S.Shanmugam
20. R.Sudandirarajan
21. S.M.Narendran
22. A.Mariappa Pillai
23. S.Chockkalingam
24. A.Balraj
25. S.Chelliah

26. A.Mari
27. G.Sukumaran [deceased]
28. S.Sripathy
29. J.Vijayaragavan
30. J.Sangeetha
31. P.Murugesan
    (P29 to P31 are brought on record as LRs of
    the deceased P12 vide order dated 03.01.2018
    made in WMP.No.32656/2017)
32. G.S.Tamilselvi
33. S.Navaneethan
34. S.Nandagopal (minor)
    rep. by his Natural guardian/mother
    Smt.G.S.Tamilselvi
    (P32 to 34 are brought on record as LRs of
    the deceased P27 vide order dated 03.01.2018
    made in WMP.No.32657/2017

... Petitioners

- Vs -

1. State of Tamil Nadu
   Rep. by its Secretary,
   Finance (BPE) Department,
   Fort St. George, Chennai-600 009.
2. Tamil Nadu Small Industries Corporation Limited,
   Rep. by its Chairman and Managing Director,
   Guindy, Chennai-600 032.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the 2nd respondent corporation namely TANSI in connection with its circular Ref. No. R.C.No.1309/ACB/2007 dated 16.7.2010 and quash the same in so far as it resolves to raise the ceiling of payment of gratuity to its officers and staff such as the petitioners only w.e.f 24.5.2010 and not from 1.1.2006 and consequently quash the rejection of petitioners representations by the 2nd respondent vide its reply under R.C. 6743/O.S./2006 - 6 dated 10.12.2010 and again on 27.7.2011 under R.C. 6743/O.S./2006-3 and direct the respondents herein to pay the difference in Gratuity to the petitioners based on the VI Pay Commission recommendations revising the ceiling for Gratuity/Death cum Retirement Gratuity from Rs.3.5 lakhs to Rs.10 lakhs with effect from 01.01.2006 together with interest at 12% till such time and issue such further or other orders.

For petitioners : Mr.Prakash
Senior Counsel
for Mr.K.Sudalaikannu

For Respondents : Mr.S.John J.Raja Singh
Additional Government Pleader for R1
Mr.V.K.Mukund
for Mr.V.R.Kamalanathan for R2

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ORDER

The instant writ petition has been filed challenging the circular issued by the 2nd respondent extending the benefit of enhanced payment of Gratuity amount only with effect from 24.05.2010 and not from 01.01.2006.

2. The learned Senior Counsel would contend that the petitioners are the retired employees of the 2nd respondent, and that the discrimination of the

2nd respondent not extending the benefit of enhanced Gratuity, in accordance with VI Pay Commission recommendations, with effect from 01.01.2006 at par with Government employees is against the equality enshrined under Article 14 of The Constitution of India. It is his further submission that treating the retired employee differently, for the payment of the Pay Commission recommendations is without any rational and intelligible differentia. He would further contend that when all Government employees are provided under VI Pay Commission recommendations with effect from 2006 and providing monetary benefits with effect from 01.01.2007, the exclusion of the 2nd respondent employees would affect their fundamental right conferred under Article 14 and 21 of The Constitution of India. Hence, would pray to quash the order dated 16.07.2010 issued by the 2nd respondent, and to direct them to implement the VI Pay Commission with effect from 01.01.2006 and provide the monetary benefits with effect from 01.01.2007. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court in ***Secretary, Mahatama Gandhi Mission and another Vs. Bhartiya Kamgar Sena and others*** reported in ***(2017) 4 SCC 449.***

3. Per contra, the learned counsel for the 2nd respondent would vehemently contend that, while the Government accepting the VI Pay Commission, passed an order implementing the same vide G.O.Ms.No.234, Finance (Pay Cell) Department dated 01.06.2009, and G.O.Ms.No.235, Finance (Pay Cell) Department dated 01.06.2009, wherein it was specifically mentioned that it could be applicable only to the Government employees, and had expressly excluded the employees of the State owned Corporation like that of the 2nd respondent. It was further contended that the G.O.Ms.No.235 was not at all communicated to the State owned Corporation. It was the further contention of the learned counsel that the issue involved in this case is no longer *res integra* as the Hon'ble Supreme Court and this Court has in various decisions held that the State owned Corporations are entitled for enhanced Gratuity only from 24.05.2010 according to the Gratuity Act. Thus, it was urged that the impugned order is well within the contours of law. Hence, prayed to dismiss the instant writ petition.

4. The learned Additional Government Pleader appearing for the first respondent also supports the contention of the learned counsel for the 2nd respondent.

5. The fulcrum of the contention of the learned Senior Counsel is that, there are no legal basis in the distinction and differentiation among the employees of the State owned Corporation, and the Government employees, and that such conduct would infringe the fundamental right provided under Article 14 and 21 of the Constitution of India.

6. The learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court in ***Bharatiya Kamgar Sena'***s case [cited supra], wherein the Apex Court held that the classification between the non teaching staff of the aided teaching institution and unaided teaching institution [Maharashtra University Act, 1994] is illegal and against Article 14 of the Constitution of India. For ready reference, the relevant paragraphs 79 and 80 are extracted hereunder:-

> *"**79.** The very fact that the Government of India thought it fit to revise the pay scales of its employees and also thought it fit to accept the suggestions of UGC to revise the pay scales of various Universities and other bodies whose maintenance expenditure is met by UGC (in other words virtually by the Union of India), shows that the Government of India is completely convinced that there is a definite need to revise the pay scales of not only its employees, but also the employees of its instrumentalities. The fact that the*

Government of India made an offer to the States that the Government of India is willing to shoulder a substantial portion of the financial burden arising out of the adoption of revised pay scales in the event of the States choosing to adopt the revised pay scales, also indicates that the Government is fully convinced that having regard to various factors operating in the economy of the country there is a need to revise the pay scales of the personnel employed even by various States and their instrumentalities. Such a conclusion of the Union of India is endorsed by the State of Maharashtra. The decision of the State in issuing the two GRs revising the pay scales of the teaching staff of all the educational institutions and non-teaching staff of the aided educational institution is proof of such endorsement.

***80**. Therefore, we see no justification in excluding the non-teaching employees of the unaided educational institutions while extending the benefit of the revised pay scales to the non-teaching employees of the aided educational institutions. Such a classification, in our opinion, is clearly violative of Article 14 of the Constitution of India.*"

7. But while looking at the above dictum, as per the paragraph 95 of the above reported judgment, there was an agreement between the employee and employer to follow the Pay Commission recommendations, and in such factual scenario, it was held that such discrimination is violation of Article 14

of the Constitution of India. But, the fact of our case is not similar to that of the above reported judgment.

8. However, the learned counsel for the 2nd respondent relied upon the judgment of the Hon'ble Supreme Court in ***State of West Bengal Vs. Subhas Kumar Chatterjee and Others*** reported in (***2010) 11 SCC 694.*** Wherein the Hon'ble Supreme Court has held that the Courts should not normally issue a declaration granting particular pay scale or fixation of pay, as the determination of pay would come within the domain of the executive, and therefore, held that the Court should not interfere in such executive complex arithmetical exercises.

9. In the case in hand, admittedly the petitioners are covered by the Payment of Gratuity Act. The petitioners did not challenge the Government Order that empowers the State-owned Corporation to fix a cutoff date in respect of the implementation of pay commission recommendations. Further, while looking at the definition of Section 2(e) of the Payment of Gratuity Act, it differentiate between the employees, who is covered by payment of Gratuity Act, and the employees those who are not covered by the Payment

of Gratuity Act. In so far as the employees of the 2nd respondent are concerned, they are governed by the Payment of Gratuity Act, and the Payment of Gratuity Act provides enhancement only with effect from 25.10.2010. This proposition is no longer *res integra* in view of the Division Bench judgments of this Court held in (i) **WA(MD).No.1626 of 2018 [P.Govindarajan Vs. The Secretary to Government of Tamil Nadu and another]** and (ii) **WA.No.1261 of 2011 [D.S.Kumar and others Vs. The Managing Director].** Accordingly, I do not find any fault in the impugned order dated 06.07.2010. Thus, there are no merits in the writ petition.

10. In the result, this writ petition is dismissed. No costs.

13.12.2024

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Index : Yes/No

Speaking Order/Non Speaking Order

NCC : Yes/No

To

1. The Secretary,
   State of Tamil Nadu
   Finance (BPE) Department,
   Fort St. George, Chennai-600 009.

2. Tamil Nadu Small Industries Corporation Limited,
   Rep. by its Chairman and Managing Director,

Guindy, Chennai-600 032.

C.KUMARAPPAN, J

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Pre-delivery Order in
WP.No.24026 of 2012

13.12.2024