IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.20529 of 2021

Tamilnadu Arasu Pokkuvarathu
Kazhaga Ooivupettra Poriyalargal
Mattrum Kanganippalargal Nala Sangam,
Rep by R.Mohan, General Secretary,
61, Pallavan Nagar,
1st Cross Strret, 1st Main Road,
Thiruverkadu,
Chennai-600 077

... Petitioner

Vs.

1.The Principle Secretary,
Tamil Nadu Government Transport Department,
Secretariat, Chennai- 600 009

2.The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd,
Pallavan House, Chennai- 600 002

3.The Chief Financial Officer,
Metropolitan Transport Corporation (Chennai) Ltd,
Pallavan House, Chennai-600 002. …Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent letter Lr.No.25563/LS (CM) V/MTC/2021 dated 07.08.2021 quash the same and consequently direct the 2nd respondent to pay difference of Gratuity amount to our members of the union who are Retired Technical Supervisory/Administrative Supervisory and Officers Cadre, those who retired from 01.01.2016 to 28.02.2018, as per G.O.Ms.No – 313 /Finance (Pay Cell) Dept dated 25.10.2017.

For Petitioner	:	Mr.S.T.Varadarajalu
For RR1	:	Mr.M.Murali Government Advocate
For R2 & R3	:	Mr.A.Vinothraj

ORDER

The petitioner herein, being an Association, filed the present petition. The petitioner herein made a claim for payment of difference of gratuity amount to the members of the petitioner's Association who retired in supervisory Administrator Cadre of the Respondent/Corporation during the period from 01.01.2016 to 28.02.2018 in terms of G.O.Ms.No.313 Finance (Pay Cell) Department dated 25.10.2017. But, the said claim made by the petitioner was rejected by the respondent/Corporation on the ground that the G.O.Ms.No.313 dated 25.10.2017 has no application to the respondent/Corporation. Aggrieved by the said order dated 07.08.2021, tha the petitioner/Association approached this Court by filing the present petition.

2. Through G.O.Ms.No.313 dated 25.10.2017 the pension, family pension and Retirement benefits of the employees who retired or died on or before 01.01.2016, were revised and certain guidelines were issued by the Government in terms of sub paragraph 2 of paragraph 21 of part B of the said Government Order. The maximum limit of retirement gratuity and death gratuity was enhanced to Rs.20,00,000/- from Rs.10,00,000/- with effect from 01.01.2016 and also the sealing of gratuity was also increased by 25%. The claim of the petitioner/Association in the present writ petition is for payment of retirement and death gratuity by taking into consideration the upper limit fixed at Rs.20,00,000/- under the said Government Order dated 25.10.2017.

3.According to the learned counsel for the petitioner, the revision of pension and family pension and Retirement benefits as ordered in G.O.Ms.No.313 dated 25.10.2017 were extended to the Statutory Boards, through G.O.Ms.No.333 Finance (BPE) Department dated 09.11.2017, to the

Managerial Cadre Officers, Technical and Administrative Supervisory Cadre Employees of the State Transport undertakings including the respondent/Corporation. Therefore, the members of the petitioner/Association are entitled for payment of gratuity by taking into consideration the upper limit as Rs.20,00,000/-. Though the benefits of the said revision of pension and other benefits were extended to the members of Association in terms of the said Government orders, members of the petitioner Association were not paid the difference of gratuity in terms of the said Government Orders and therefore, they made a claim for such payment of differential amount of gratuity and same was rejected by the respondent on the ground that G.O.Ms.No.313 dated 25.10.2017 has no application to the respondent/Corporation.

4.Though, the 3rd respondent filed a counter affidavit, absolutely there is nothing to meet the contentions raised in the writ petition nor any justification is made for denying the benefits of payment of differential amount of gratuity to the members of the petitioner Association except contending that the G.O.Ms.No.313 dated 25.10.2017 has no application to the respondent Corporation.

5.The reason given in the impugned order is totally unsustainable especially in the context of the fact that, the members of the petitioner were already extended the benefits as ordered in the said Government Orders and they are also equally entitled for differential amount of gratuity.

6.As seen from G.O.Ms.No.333 dated 09.11.2017 and G.O.Ms.No.134 dated 09.04.2018 the revision of pension and other retirement benefits as ordered in G.O.Ms. No.313 dated 25.10.2017 were extended to the Statutory Board, especially in favour of the Managerial Cadre Officers and Technical and Administrative Supervisory Cadre Employees of the State Transport undertakings. The issuance of the above said two Government Orders is not in dispute and it is also not in dispute that the members of the Petitioner/Association were extended some of the benefit of the said Government Orders. In the teeth of same, there is no justification for the respondent to contend that the G.O.Ms. No.313 dated 25.10.2017 has no application to the respondent/Corporation. The respondent/Corporation, while passing the impugned order failed to take into consideration, the subsequent Government Orders namely G.O.Ms.No.333 dated 09.11.2017 and G.O.Ms.No.134 dated 09.04.2018. Inspite of raising a specific plea in the affidavit filed in support of the writ petition of extending the benefit of the above Government Orders to the members of the petitioner Association, unfortunately, the counter filed by the respondent is totally silent on this aspect.

7.In the light of the above, in the considered view of this Court the impugned order passed by the respondents contending that orders issued in G.O.Ms.No.313 dated 25.10.2017 has no application to the respondent/Corporation cannot be sustained and accordingly, the impugned order is set aside. Further it is also brought to the notice of this Court by the learned counsel for the petitioner that this Court, under similar circumstances, in W.P. Nos.3697 of 2023, etc., batch by an order dated 08.09.2023, directed the respondents to calculate the difference of gratuity and leave salary as per Rules and ordered for payment of such differential amount to the petitioners. The relevant paragraphs from the said order reads as follows:

> *"2. The petitioners are retired employees of the respondent corporation. They retired as Senior Assistant Engineer or Selection Grade Assistant Engineer, Assistant Engineer or Junior Engineer. They retired on attaining the age of superannuation before 01.10.2017. They were*

settled terminal benefits as per the recommendations made in 6th Pay Commission. After their retirement, the Government of Tamil Nadu had implemented the recommendations of the 7th Pay Commission and revised the pay and allowances accordingly which came into effect from 01.01.2016, however, monetary benefits were given effect from 01.10.2017. The respondent corporation revised the pay to the serving employees in April 2018 and for the retired employees in October, 2019 only. However, the respondent corporation had not settled the revised service/terminal benefits such as difference in leave salary and difference in gratuity as per the recommendations of 7th Pay Commission and surrendered Earned Leave Salary while on service. The respondent by individual orders dated 14.12.2022 declined to grant the reliefs claimed by the petitioners which are nothing but illegal and the same are liable to be set aside.

3. Heard both sides.

4.The grievance of the petitioners is that the gratuity and leave surrender salary were not paid to them as per the recommendations made under 7th Pay Commission.

5. The learned counsel for the petitioners submitted *that after filing of these writ petitions, the State Government by its letter dated 25.05.2023 has, in fact, agreed and clarified that as per 7th Pay Commission and G.O.(Ms) No.134, Transport (D) Department dated 09.04.2018, the employees who have retired during the period from 01.01.2016 to 08.04.2018 are entitled to the revised new pay structure and on that basis gratuity (DCRG) and leave Salary shall be calculated and paid to them.*

6. The learned standing counsel appearing for the petitioner has not disputed the above factual position.

7. A perusal of the Government letter referred to above made it clear that the petitioners who have retired between 01.01.2016 and 08.04.2018 are entitled to revised pay structure and as such they are entitled to difference in gratuity and leave salary. The petitioners cannot be denied such benefits. Therefore, the orders impugned in the writ petitions denying the difference in payment of gratuity and leave salary are liable to be quashed.

In the result, the writ petitions are allowed. The impugned orders of the 2nd respondent dated 14.12.2022 are quashed. The respondents are directed to calculate the *difference in payment of gratuity and leave salary as per rules and taking into consideration the clarification letter of the Additional Chief Secretary to Government of Tamil Nadu, Department of Transport, dated 25.05.2023 referred to above and settle the same together with applicable interest, if any, as per rules within a period of two months from the date of receipt of a copy of this order. No costs."*

8.In the light of the above, this Court is unhesitant to conclude that the impugned order passed by the respondent/Corporation is wholly unsustainable and the same is accordingly set aside. The respondents are further directed to extend the benefit of the G.O.Ms.No.313 dated 25.10.2017 and G.O.Ms.No.134 dated 09.04.2018 and to pay the differential amount of gratuity to the members of the Petitioner/Association by calculating the same as expeditiously as possible at any rate, within a period of three months from the date of receipt of a copy of this order.

9.Accordingly, the writ petition is allowed. The miscellaneous applications, if any, shall stand closed. No costs.

05.06.2024

Index : Yes/No

Speaking Order : Yes/No
vsn

To:

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Tamil Nadu Government Transport Department,
Secretariat, Chennai- 600 009

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Metropolitan Transport Corporation (Chennai) Ltd,
Pallavan House, Chennai- 600 002

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MUMMINENI SUDHEER KUMAR,J.

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