



WP.(MD).No.265 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.265 of 2024

C.Baluchamy

... Petitioner

Vs.

1.The Managing Director,
State Express Transport Corporation (Tamil Nadu) Ltd.,
Pallavan Salai, Chennai-2.

2.The General Manager,
State Express Transport Corporation (Tamil Nadu) Ltd.,
Pallavan Salai, Chennai-2.

3.The Branch Manager,
State Express Transport Corporation (Tamil Nadu) Ltd.,
Madurai-7

4.The Administrator
Tamil Nadu State Transport Corporation Employees
Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai-2.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to implement G.O.(Ms).No.146 Transport (C) Department dated 30.11.2015 by Re-designating the petitioner as Selection Grade Superintendent so as to enable the petitioner to



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receive Selection Grade Superintendent Time Scale of Pay of Rs. 7500-250-12500 notionally w.e.f. 01.01.2008 and Revised Scale of Pay (as per 6th Pay Commission) of Rs.9300-34800 + Grade Pay of Rs.4900 w.e.f. 17.06.2009 and monetary benefit w.e.f. 01.04.2015 and in the light of the orders passed by this Honourable High Court in W.P.(MD).No.13750 of 2016 dated 16.11.2023 and consequently revise the pension w.e.f. 01.04.2015 and to pay arrears of Pension along with interest at the rate of 9% p.a. till the date of payment.

For Petitioner : Mr.S.Govindan
For Respondents 1 to 3 : Mr.K.Senthil Kumar
Standing Counsel
For 4th Respondent : Mr.S.C.Herold Singh
Standing Counsel

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, seeking to direct the respondents to implement G.O. (Ms).No.146 Transport (C) Department dated 30.11.2015 by Re-designating the petitioner as Selection Grade Superintendent so as to enable the petitioner to receive Selection Grade Superintendent Time Scale of Pay of Rs.7500-250-12500 notionally w.e.f. 01.01.2008 and Revised Scale of Pay (as per 6th Pay Commission) of Rs.9300-34800 + Grade Pay of Rs.4900 w.e.f. 17.06.2009 and monetary benefit w.e.f. 01.04.2015 and in the light of the orders passed by this Honourable High Court in W.P.(MD).No.13750 of



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2016 dated 16.11.2023 and consequently revise the pension w.e.f. 01.04.2015 and to pay arrears of Pension along with interest at the rate of 9% p.a. till the date of payment.

2.The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

The petitioner was appointed as Junior Assistant on 16.07.1974. He was promoted as Assistant on completion of six year in the year 1980, as Senior Assistant in the year 1988, as Selection Grade Assistant in the year 1998 and finally as Superintendent on 03.06.2006. On attaining the age of superannuation, he retired on 31.03.2007 completing 26 years of service as Assistant. The Government order was issued in G.O.Ms.No.146 Transport (C) Department dated 30.11.2015, revising the scale of pay of the Superintendent of State Transport undertakings on par with Government Servants as per the 5th Pay Commission recommendations. The petitioner was promoted as Superintendent on 03.06.2006 and thereafter, he retired on 31.03.2007. Hence, he submitted a detailed representation as early as on 08.04.2015 for grant of 5th Pay Commission benefits on par with Government Servants for the post of Superintendent in terms



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of G.O.Ms.No.146 dated 30.11.2015. However, the same was not considered. Hence, he submitted another representation dated 28.09.2015 and the last of such representation was made on 28.12.2023. However, none of the representations were heeded to by the respondents. Hence, this Writ Petition came to be filed.

3.Heard the learned counsel appearing for the petitioner, the learned Standing counsel appearing for the respondents 1 to 3, the learned Standing counsel appearing for the 4th respondent and carefully perused the entire materials available on record.

4.The crux of the lis in hand is no more *res integra*. This Court in W.P.(MD)No.13750 of 2016 has dealt with the same issue and has passed orders on 16.11.2023 and the relevant portion of which is extracted as follows:-

“5. It is admitted case on both sides that the Administrative Supervisory cadre, namely posts held by the petitioners who had been promoted to the post of Superintendent and rendered not less than 14 years of service up-to Senior Assistant cadre and further period of 10 years of service in the Senior Assistant cadre before getting themselves promoted as Superintendents by virtue of G.O. will be re-designated as Selection Grade Superintendent. Such re-designation was done so as to enable the persons



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who had been rendered 24 years of service totally before the promotion to the post of Superintendent to receive the Selection Grade Superintendent time scale of pay of Rs. 7500-250-12500 w.e.f. 01.01.2008 as per 5th Pay Commissioner and the pay scale revised as per 6th Pay Commission w.e.f. 17.06.2009. The revision was though given from 01.01.2008, the effect was to be fixed notionally with the petitioner being entitled to the monetary benefits only from 01.04.2015. Since it was not implemented, the present Writ Petition came to be filed.

7. It is pertinent to point out that G.O.(Ms) No.146, Transport (C) Department, dated 30.11.2015 had been issued in the exercise of powers vested in the Government under Article 166 of the Constitution of India and in the name of His Excellency Governor of Tamil Nadu. As rightly pointed out by the learned counsel for the petitioners, the Government Letter cannot override the effect of an order passed by the Government. This issue is no longer res integra and has been settled atleast 4 decades ago in W.P.No.1713 of 1988. The view taken in the said case was followed by another learned Single Judge [N.Paul Vasanthakumar, J., as he then was] in K.Sampath Vs. State of Tamil Nadu, rep. by the Secretary to Government, Rural Development Department, Chennai and others, reported in (2006) 4 MLJ 1027. The learned Single Judge in paragraph No.10 has held as follows:-

10.(a) In the decision reported in R.P.Bhardwaj v. Union of India and others 2005 (10) SCC 244 the issue dealt with was as to whether a letter of the Central Ministry issued by the Secretary will over ride the Office Memorandum and the Honourable Supreme Court held that the



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Government letter cannot be acted upon unless a new Office Memorandum is issued. The relevant portion of para 8 is extracted hereunder:

"..... We have already noticed that the O.M. dated 19.7.1989 contained instructions to be noted and followed by all concerned. That position was prevailing when the proposal by means of letter dated 23.11.1989 was mooted. It was not yet issued as O.M. for compliance by all concerned as was done in respect of the O.M. dated 19.7.1989. In our view, it was still at a premature stage and before being final so as to be circulated by the Government of India for being followed by the authorities and the departments and all concerned, it seems to have been acted upon by the Service Commission against the O.M. which was in operation. Even if any implied approval is inferred by the Public Service Commission, it would be of no consequence since then too it would not be anything more than an approval of a proposal. An approved proposal would not replace an O.M. issued by the Government of India. Even after approval the Government may not issue any O.M. The Commission wrongly acted upon the mere proposal."

(b) In an unreported decision in W.P.No.1713 of 1988, etc., batch by common order dated 7.11.1990, this Court considered similar issue as to whether the Government letter will prevail over the Government Order or not and held that the Government Order having been authenticated and expressed to be taken in the name of the Governor,



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has the sanctity of an order issued under Article 166 of the Constitution of India and the Government letter issued subsequently cannot supersede the earlier Government Order.

(c) This Court in the decision reported in P.Jeya v. Union of India & Others 2004 WLR 805 considered a similar issue as to whether the Government letter will prevail over the Government Order. The relevant portion of para 34 reads as follows:

"In the given case, Government Order has been passed in exercise of power under Article 162 of the Constitution of India and it is an executive order, which could be issued only in the name of the Governor. The executive order issued in the name of the Governor cannot be modified by another executive order, not being issued in the name of the Governor....."

8. In view of the above, the only objection that was raised before me namely, the letter issued by the Principal Secretary prevents the Department from implementing the G.O. with respect to the persons like the petitioners has to fail. Consequently, this Writ Petition deserves to be allowed. There shall be a Mandamus as prayed for. The petitioners will be entitled to the notional benefits from 01.01.2008 and financial benefits commencing from 01.04.2015."

5. Fully fortified by the order passed by this Court in the case discussed supra, I hereby allow the Writ petition observing that the petitioner will be entitled to notional benefits from 01.01.2008 and



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financial benefits from 01.04.2015 respectively. The respondents are directed to consider the petitioner's representation dated 28.12.2023 and pass appropriate order within a period of four weeks from the date of receipt of copy of this order in line with the discussions supra. The petitioner is also entitled for arrears of pension along with 6% interest till the date of payment.

6.In view of the above, this Writ Petition stands allowed.
There shall be no order as to costs.

06.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes



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L.VICTORIA GOWRI, J.

Mrn

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