BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.07.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.6211 of 2024

J.Sivakumar ... Petitioner

Vs.

1.The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Rep by its Managing Director,
Kumbakonam.

2.The General Manager,
The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Nagapattinam Region, Nagapattinam.

3.The Administrator,
The Tamil Nadu Transport Corporation,
Employees Pension Fund Trust,
Thiruvalluvar Illam, Pallavan Salai,
Chennai – 02.

4.The Principal Secretary,
Department of Transport,
Secretariat,
Chennai – 600 009. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents herein to revise the wages of the petitioner with effect from 01.09.2019 based on the 14th wage settlement, dated 24.08.2022 and to pay arrears of wages payable from 01.09.2019 to 29.02.2020, difference in Gratuity, difference in Provident Fund, difference in Leave Salary and arrears of Pension from 01.03.2020 to 28.02.2023 along with the interest at the rate of 12 percent per annum from the date of wage settlement ie. 24.08.2022 till the date of actual payment.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.S.Shanmugavel (R4)
Additional Government Pleader
Mr.K.Ramaiah (R1 & R2)
Mr.S.C.Herold Singh (R3)

ORDER

This writ petition has been filed seeking for a Writ of Mandamus, directing the respondents herein to revise the wages of the petitioner with effect from 01.09.2019 based on the 14th wage settlement, dated 24.08.2022 and to pay arrears of wages payable from 01.09.2019 to 29.02.2020, difference in Gratuity, difference in Provident Fund, difference in Leave Salary and arrears of Pension from 01.03.2020 to 28.02.2023 along with the interest at the rate of 12 percent per annum from the date of wage settlement ie. 24.08.2022 till the date of actual payment.

2. Heard the learned counsel appearing on either side.

3. It is submitted by the learned counsel for the petitioner that the benefits were settled under the 14th wage revision settlement. As a result of the collective bargaining between the representatives of the State Government, State owned transport undertakings and the various other trade unions, with full and matured deliberation, after taking into account of the interest of the employees, the interest of the Transport Corporation and the State, with a view to realize the goal of a living wage as envisaged under Article 43 of the Constitution and hence, unreasonable restriction of the same through the impugned letter will not stand the scrutiny of law and the same has to be quashed.

4. During the implementation of the 13th wage revision settlement, the Government had issued directions through a Government Order in G.O.Ms.No.142 dated 26.08.2019, for implementing the revision of pension as per 7th Pay Commission to the pensioners with notional effect

from 01.01.2016 and with monetary benefits prospectively, but freezing the dearness allowance at the present rate. The said G.O. was challenged by the pensioners by filing W.P.(MD)No.1147 of 2020 etc., batch and a learned Single Judge of this Court, by order, dated 02.03.2023, modified the aforesaid Government order with certain directions.

5. A Writ Appeal was preferred in W.A.(MD)No.1240 of 2023 to challenge the order of the learned Single Judge. The Hon'ble Division Bench of this Court has held in the Writ Appeal through the Judgment, dated 13.09.2023 indicating that the executive instructions cannot supersede the extant rules and confirmed the order of the learned Single Judge. The relevant part of the Judgment in W.A.(MD)No.1240 of 2023, dated 13.09.2023 ***[The Administrator and others Vs. Pokkuvarathu Kazhaka Oyvu Petra Aluvalar Nala Sangam, Kovai and others]*** is extracted below:

> *'Once a particular decision of implementing the Revised Pay Rules, is implemented as such granting the benefits retrospectively, then at the time of carrying out of the same, it cannot proclaim one and restrict thereafter. In this regard, useful reference can be made to the Judgment of the Division Bench of this Court in* **Tamil Nadu Electricity**

Board and Another Vs. G.Sethuraman ***[Writ Appeal No. 3235 of 2004 dated 04.04.2005]*** *and Paragraph Nos. 13 and 14 of the said Judgment are extracted hereunder:*

"13. In an oft quoted passage in **East End Dwelling Co. Ltd v. Finsbury Borough Council, (1951) 2 All.E.R 587***, Lord Asquith observed : -*

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs"

The above observation has been quoted with approval by the Supreme Court in several decisions e.g. Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd., AIR 2003 SC 511 (para-33), C.W.T v. Trustees of H. E.H., (2003) 5 SCC 122 (para-20), Dipak Chandra Ruhidas v. Chandan Kumar Sarkar, (2003) 7 SCC 66 (para-12), etc.

14. In the present case, the legal fiction which has been created by order dated 7.6.1996 is that the writ petitioner is deemed to have been retrospectively promoted as Executive Engineer from 9.6.1988. Hence full effect must be given to this legal fiction, and for all purposes we have to treat it as if the writ petitioner had in fact been promoted as Class I officer from 9.6.1988, and our eyes should not boggle half way. For these reasons, we fully agree with the view *taken by the learned single Judge in the impugned judgment."*

Thus it can be seen that in the instant case also, after making a conscious decision implementing the order partly by way of Statutory Rule and partly by way of extending the benefit, at the final lap, the eyes of the Government had boggled. Therefore the same is impermissible.'

6. The Corporation challenged the order passed in the Writ Appeal by filing a SLP(C) before the Hon'ble Supreme Court in SLP(C) No. 27785 of 2023 and the Hon'ble Apex Court, by its order, dated 06.02.2024, dismissed the same. In the same manner, after having arrived at a settlement by signing the 14th wage revision settlement, the Government has issued the impugned Government letter, dated 17.02.2023, in similar lines to the modified G.O.Ms.No.142, dated 26.08.2019 and thereby directed the respondents to implement the revision of pension with notional effect from 01.09.2019 and with monetary benefits prospectively. The said Government Order has also freezed the dearness allowance at the present rate without any change.

7. Once a particular decision for revising the wages is taken and evolved into an agreement between the parties including the State, as

such granting the benefits retrospectively, then at the time of implementing the same, it cannot make any partial denial by passing orders to restrict the benefits. A Government letter cannot over rule the extant rules, when the rules say that the employees are entitled to the benefits immediately after retirement. Hence, without any doubt and in view of the settled legal position, the employees who worked in the Transport Corporation and have retired between 01.09.2019 and 31.07.2022 are entitled to receive the revised monetary benefits from the date on which the revised monetary benefits were agreed under the 14th wage revision settlement.

8. As the pension has also been revised under the terms of the 14th wage revision settlement and Rule 15 of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules, the last drawn basic salary shall be the salary to be taken for calculating pensions. As the last drawn salary has been revised in terms of the 14th wage revision settlement, the impugned letter cannot restrict the benefits. The respondents are to be directed to revise the monetary benefits and the difference in the revised pension which is payable from the date on which the revised monetary

benefits were given to the working employees under the 14th wage revision settlement.

9. Accordingly, the Writ Petition is **allowed** to the extent indicated above and the respondent Corporation is directed to pay the difference in the benefits in respect of Gratuity and Encashment of Leave salary, commuted value of pension and monthly pension with arrears from the date of retirement, as per wage settlement, dated 24.08.2022 along with dearness allowance. This amount shall be paid within a period of six (6) months from the date of receipt of a copy of this order. The respondent Corporation has to make out the differential payment with interest at the rate of 6% per annum to be computed from the date of the petitioners' retirement till the date of payment. No costs.

18.07.2024

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

1.The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Rep by its Managing Director,
Kumbakonam.

2.The General Manager,
The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
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3.The Administrator,
The Tamil Nadu Transport Corporation,
Employees Pension Fund Trust,
Thiruvalluvar Illam, Pallavan Salai,
Chennai – 02.

4.The Principal Secretary,
Department of Transport,
Secretariat,
Chennai – 600 009.

R.N.MANJULA, J.

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Order made in
W.P.(MD)No.6211 of 2024

18.07.2024