BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2024

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THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.12746 of 2024

S.R.Murugesan ... Petitioner

Vs.

The Managing Director,
Tamilnadu State Transport Corporation (Madurai) Ltd.,
Bye-pass Road,
Madurai. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents to pay the difference amount of the petitioner's retirement benefits such as gratuity and leave salary based on the terms of the wage revision settlement under section 12(3) I.D. Act dated 04.01.2018 along with interest at the rate of 6% per annum.

For Petitioner : Mrs. D.Ramya

For Respondent : Mr.S.Raja
Standing Counsel

ORDER

By consent of both the parties, these Writ Petitions are taken up for final disposal at the admission stage itself.

2. Heard Mrs.D.Ramya, learned counsel appearing for the petitioner and Mr.S.Raja, learned Standing Counsel appearing for the respondent.

3. The petitioner was appointed as Conductor in the respondent Corporation on 09.06.1987 and thereafter he was promoted to the post of Special Grade Checking Inspector and retired on 30.06.2017.

4. After his retirement, a settlement was entered into between the Union and the Management on 04.01.2018. But it was made applicable with effect from 01.09.2016. Therefore, the petitioner was also entitled to the benefit under the said settlement, dated 04.01.2018. But their terminal benefits were settled without reference to the terms of the settlement. Therefore, the petitioner is entitled to not only the difference in benefits but also to the interest thereon.

6. However, the learned Standing counsel appearing for the respondent has seriously objected to extend the said benefit to the petitioner.

7. So far as the dearness allowance and pension arrears are concerned, they were freezed in view of G.O.(Ms)No.142, dated 26.08.2019. So far as the pension is concerned, it is given with notional effect from 01.01.2006 and with monetary benefit prospectively. For better appreciation, Rules 15, 16 and 20(A) is extracted as under:

*"**15.DETERMINATION OF PENSIONABLE SALARY***

a) Pensionable salary shall be the last drawn basic pay.

b) The actual Basic Pay includes Personal Pay.

16.MONTHLY MEMBER'S PENSION

a) A Member shall be entitled to -

i)Superannuation Pension, if he has rendered a qualifying service of 10 years or more and retires on attaining the age of 58 years or the retirement age that may be fixed by the employer.

ii) Voluntary Retirement: Pension, if has rendered a qualifying service of 20 years or more and attained the age of 50 years.

b) In the case of exit of an employee, the amount of monthly superannuation pension or retiring pension, as the case may be, shall be computed in accordance with the *following formula namely:*

Monthly Member's Pension - Pensionable salary (50 % of last drawn basic pay)X Pensionable Service**/30*

** Basic Pay includes Personal Pay*

***The Pensionable service shall be restricted to 30 years.*

c) Except as otherwise expressly provided hereinafter the monthly members pension under sub~paragraph (b) mentioned above shall be payable from the date immediately following the date of completion of 58 years of age notwithstanding that the member has retired or ceased to be in the employment. The application for pension shall be submitted in the format prescribed by the Trust."

8. This writ petitioner also got retired between the period involved in question in the above settlement and mentioned in the above Government Order. But the batch of writ petitions have been filed by various persons affected by the above Government Order by challenging the Government Order, in which, this Court has passed an order in W.P.(MD)Nos.1147 of 2023 and batch, dated 12.03.2023 by modifying the said Government Order. The following relief has been given by modifying the Government Order :

"19. Further, a Government Order cannot overrule the Rules, when the Rules says that the employees entitled to the benefits immediately after retirement, the employees worked in the respondent Transport Corporation, who have retired between 01.09.2016 and 31.12.2017, are entitled to receive revised monetary benefits from the date on which the revised monetary benefits were given to the working employees under the 13th Wage Settlement. Further, the employees who have retired between 01.01.2016 and 31.03.2018 are entitled to receive the revised monetary benefits from the date on which the revised monetary benefits were given to the working employees as per 7th Pay Commission. Hence, to that extent, the impugned G.O., is modified. Further, with regard to dearness allowance, the retired employees are entitled to the percentage of dearness allowances as fixed by the State Government to the in-service employees. The respondents are directed to calculate the arrears of pension payable to the petitioners and settle the entire benefit, within a period of twelve weeks from the date of receipt of a copy of this order."

9. The Transport Corporation has filed an appeal challenging the above order in W.A.(MD)No.1240 of 2023 and the same was also dismissed by confirming the order of the learned Single Judge. It is also appropriate to refer to the observations made in the Writ Appeal as under:

"5.3. Thus it can be clear that even though it was within the

realm of the Board of Directors to have postponed the actual financial benefits, they thought it otherwise and consequently even the pension fund trust ordered implementation. When that being so, without even referring to G.O.Ms.No.134, the impugned Government order in G.O.Ms.No.142, dated 26.08.2019 is issued by restricting the monetary benefit prospectively. In this regard, it is the Government which decided to extend subject to conditions and it is the corporations which expected to extend with or without any modification of the Government Scheme. 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.Sethuraman1 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."

(emphasis supplied)

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.

***F. The Result**:*

6. In that view of the matter, no exception can be taken for the findings and conclusions reached by the learned Single Judge and accordingly, finding no merits, the Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is *closed."*

10. The dearness allowance and pension arrears have already been settled. As on today, the orders passed in the writ appeals have not been stayed and it is very much in force. In fact, the respondent Corporation has filed Special Leave Petition No.27785 of 2023, challenging the judgment passed in the writ appeal, before the Supreme Court and the same was also dismissed on 06.02.2024. Hence, the matter has attained finality now.

11. However, the learned Standing Counsel for the respondent submitted that the Transport Corporation has filed a review petition before the Writ Appeal Court in Rev.Aplc.(MD).No.36 of 2024 and the Government has also filed W.A.(MD)No.246 of 2024 challenging the order passed in W.P.(MD)No.1147 of 2023. But, no interim order has been passed so far by staying the operation of the orders passed in Writ Appeal and hence, the matter has already attained finality. Since the similar relief has been granted for other similarly placed persons, I do not find any reason to withhold the relief claimed by these petitioner on the submission made by the petitioner.

12. Accordingly, this Court directs the respondent Corporation to pay differential benefits in respect of Gratuity and Encashment of Leave with arrears from the date of retirement as per wage settlement, dated 04.01.2018 along with dearness allowances. 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 the differential payment with 6% interest per annum to be computed from the date of the petitioner's retirement till the date of payment.

13. With the above directions, this Writ Petition is **disposed of**. No costs.

14.06.2024

NCC :yes/no
Index :yes/no
Internet:yes/no

PJL

To

The Managing Director,

Tamilnadu State Transport Corporation (Madurai) Ltd.,

Bye-pass Road,

Madurai.

R.N.MANJULA, J.

PJL

W.P.(MD)No.12746 of 2024

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