BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P(MD)No.17014 of 2024

A.Iyyappan ... Petitioner

Vs.

1.The Additional Chief Secretary to Government of Tamil Nadu,
Transport Department, Secretariat,
Chennai – 09.

2.The Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
Represented by its Managing Director,
Tirunelveli.

3.The General Manager,
The Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
Tirunelveli Region,
Tirunelveli.

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

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to pay the difference amounts in the benefits in respect of Gratuity, Encashment of Earned Leave salary, Commuted value of pension and monthly pension with arrears from the date of retirement to the petitioner as per the Wage Revision Settlement dated 24.08.2022 together with interest at the rate of 6% per annum for the differential payment to be computed from the date of his retirement to till the date of payment within a time frame fixed by this Court.

For Petitioner	: Mr.A.Rahul
For Respondents	: Mr.J.Ashok, - for R1 Additional Government Pleader
	Mr.K.Ramaiah – for R2 & R3 Standing Counsel
	: Mr.S.C.Herold Singh - for R4

ORDER

Heard the learned counsel appearing on either side.

2. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. The case of the petitioner is that after having rendered an unblemished service in the Transport Corporation, the petitioner retired from service on 29.02.2020.

4. After retirement, settlement was entered into between the Union and the Management on 24.08.2022. But it was made applicable with effect from 01.09.2019. But the terminal benefits were settled without reference to the terms of the settlement. Therefore, the petitioner is entitled not only to the difference in benefits, but also to the interest accrued thereon.

5. However, the learned counsel appearing for the Administrator has seriously objected to extend the same benefit to the allowance of dearness allowance and pension arrears.

6. So far as the dearness allowance and pension arrears are concerned, by virtue of G.O.(Ms)No.142, dated 26.08.2019, the grant of dearness allowance was freezed. So far as pension is concerned, it is given with the notional effect from 01.01.2006 and monetary benefit prospectively. For a better appreciation, Rules 15, 16 and 20(A) read as follows:

> ***'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.'

7. The writ petitioner has retired from service between the period pertaining to the settlement and as mentioned in the above Government Order. But a batch of writ petitions have been filed by various persons, who are affected by the above Government Order and challenged the same. 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."

8. 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."

9. The claim of the petitioners in respect of dearness allowance and pension arrears have already been settled and the said claims are no more *res integra*. As on today, the orders passed in the writ appeals have not been stayed and it is still in force. In fact, the respondent Corporation has filed a Special Leave Petition No.27785 of 2023, challenging the judgment passed in the writ appeals, before the Supreme Court and the same was also dismissed on 06.02.2024. Hence, the matter has attained finality now.

10. However, the learned Standing Counsel for the respondents 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, so far no interim order has been passed by staying the operation of the orders passed in the Writ Appeals and in fact, none of the respondents seems to have filed any review petition before the Supreme Court, where the matter has already attained its finality. Since similar relief has been granted to the other similarly placed persons, I do not find any reason to withhold the relief as claimed by the petitioner.

11. In view of the same, the Writ Petition is **disposed of** and the respondent Corporation are directed to pay the difference in benefits in respect of Gratuity and Encashment of Leave salary, commuted value of pension and monthly pension with arrears from the date of his 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 the differential payment with interest at the rate of 6% per annum to be computed from the date of the petitioner's date of retirement till the date of payment. No costs.

26.07.2024

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

RM

To

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R.N.MANJULA,J.

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