BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.30201 of 2023
and
W.M.P.(MD)No.26037 of 2023

A.Jeyabharathi ... Petitioner

Vs.

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

2. The Managing Director, The Tamil Nadu State Transport Corporation (Madurai) Ltd., Madurai.

3. The General Manager, The Tamil Nadu State Transport Corporation (Madurai) Ltd., Madurai Region, Madurai.

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, praying this Court to issue a Writ of Cetriorarified Mandamus, calling for the records pertaining to the Impugned Government letter issued by the 1st Respondent in Ref.No.2048/E1/2022-2 Transport (E1) Department dated 17.02.2023, quash the same in so for as restricting the payment of revised pension prospectively and freezing rate of Dearness Allowance at present rates and in so far as not giving any direction to 2nd respondent to pay other terminal benefits to the petitioner including difference amounts in Gratuity, Leave salary, based on the revised salary payable to him as on the date of his retirement as per pay revision given under 14th wage revision settlement signed under section 12(3) of the I.D. Act dated 24.08.2022 and consequently directing the respondents to pay the petitioner difference amounts in gratuity, Leave salary, and Pension with arrears alongwith Dearness Allowance and percentage of Dearness Allowance as fixed by the State Government to the in-service employees of the transport corporation based on such wages payable to him as on the date of his retirement that is as on 31.07.2022 in terms of the above settlement along with interest at the rate of 6% per annum within a timeframe as may be fixed by this Hon'ble Court.

For Petitioner	:	Mr.A.Rahul
For R-1	:	Mr.M.Siddharthan Additional Government Pleader
For R-2 & R-3	:	Mr.K.Ramaiah, Standing Counsel

For R-4 : Mr.S.C.Herold Singh,
Standing Counsel

ORDER

Heard, the learned Counsels on either sides. Carefully perused the materials available on record.

2. The impugned letter dated 17.02.2023 obviously deprives the petitioner's right to refixation of their terminal benefits including Gratuity, Leave Salary, Commuted value of pension, monthly pension and family pension, which was vested on them under clause 1 and 2 of the 14^{th} wage revision settlement. Since this deprivation of refixation of terminal benefits of the petitioner, which was secured under the 14^{th} wage revision settlement arrived at, as a result of the collective bargaining between the representatives of the State Government, State owned transport undertakings and the various trade unions, with full and matured deliberation, after taking into account the interest of the employees, the interest of the Transport Corporation and that of the state, with a view to approximating towards the goal of a living wage as envisaged in

Article 43 of the Constitution, would amount to an unreasonable restriction, the impugned letter will not stand the scrutiny of law and the same has to be modified.

3. During the implementation of the 13th wage revision settlement, the Government issued G.O.Ms.No.142 dated 26.08.2019, thereby directing to implement the revision of the pension as per 7th pay commission to the pensioners with notional effect from 01.01.2016 and with monetary benefits prospectively, thereby freezing the dearness allowance at the present rates without any change. 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 his order dated 02.03.2023 modified the aforesaid Government order with certain directions. A Writ Appeal was preferred as against the said order of the learned Single Judge in W.A.(MD)No.1240 of 2023 and the Hon'ble Division Bench of this Court clearly indicating that executive instructions cannot supersede the extant rules upheld the order passed by the learned Single Judge and the relevant portion of which is extracted as follows:

> *"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."*

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. "

4. The same was further challenged by the respondent Corporation before the Hon'ble Supreme Court by filing a SLP in (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, in the instant lis, 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, thereby directing the respondents to implement the revision of the pension with notional effect from 01.09.2019 and

with monetary benefits prospectively and freezing the dearness allowance at the present rates without any change.

5. Fully fortified by the judgment passed by the Hon'ble Division Bench of this Court in the case discussed supra, I hereby observe that once a particular decision of implementing revision of wages 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. Concluding that a Government letter cannot over rule the extant rules, when the rules says that the employees are entitled to the benefits immediately after retirement, the employees who worked in the Transport Corporation who have retired between 01.09.2019 and 31.07.2022 are entitled to receive revised monetary benefits from the date on which revised monetary benefits were given to the working employees under the 14th wage revision settlement.

6. Hence, in view of the fact that the pension has been revised in terms of the 14th wage revision settlement and rule 15 of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules, pensionable salary shall be the

last drawn basic salary and taking into account that, the last drawn basic salary has been revised in terms of the 14^{th} wage revision settlement, impugned letter is hereby modified by directing the respondents to revise the monetary benefits and the difference in the revised pension is payable from the date on which the revised monetary benefits were given to the working employees under the 14^{th} wage revision settlement.

7. Further with regard to the dearness allowance the retired employees are entitled to the percentage of the dearness allowances as fixed by the State Government to the inservice employees. The respondents are directed to calculate the difference in gratuity and leave salary from the date of retirement. Further, the respondents are directed to calculate pension with arrears along with DA payable to the petitioners and settle the entire benefits within a period of twelve (12) weeks from the date of receipt of a copy of this order.

8. Accordingly, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

04.03.2024

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

To

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

2. The Managing Director,
The Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Madurai.

3. The General Manager,
The Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Madurai Region,
Madurai.

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

L.VICTORIA GOWRI, J.

Sml

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