



W.A.(MD)No.302 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.02.2025

CORAM:

THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**

AND

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.A.(MD)No.302 of 2025

&

C.M.P.(MD)Nos.2298 & 2301 of 2025

The Principal Secretary to Government,
Transport (E) Department,
Fort St.George, Chennai-9.

... Appellant

-Vs-

1.V.Gunasekaran

2.The Management of the Tamil Nadu
State Transport Corporation (Kumbakonam) Limited,
Rep. by its Managing Director, Kumbakonam.

3.The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Nagapattinam Region, Nagappatinam.

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

... Respondents



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PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 02.03.2023 made in W.P.(MD)No.12641 of 2020 on the file of this Court.

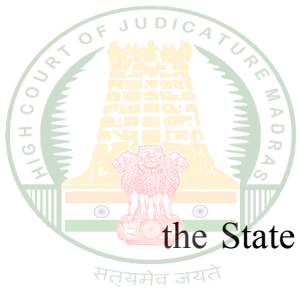
For Appellant : Mrs.D.Farjana Ghoushia,
Special Government Pleader
For R2 & R3 : Mr.K.Ramaiah,
Standing Counsel
For R4 : Mr.S.C.Herold Singh
Standing Counsel

JUDGMENT

[Judgment of the Court was delivered by **J.NISHA BANU, J.**]

This Writ Appeal is directed against the order of this Court dated 02.03.2023 made in W.P.(MD)No.12641 of 2020. The said Writ Petition was heard along with a batch of Writ Petitions and disposed of by a common order.

2.The Government revised the pay of its employees pursuant to the recommendations of the 7th Pay Commission vide G.O.Ms.No.303, dated 11.10.2017. Thereafter, the Government issued G.O.Ms.No.319, dated 26.10.2017, by which, the Government while deciding to extend the benefits to



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the State Pubic Sector Undertakings, left it to the Board of Directors to consider the financial position and implement the revised pay notionally from 01.01.2016 and with monetary benefit from 01.10.2017 or later and the Board was also given the power to implement the pay revision/postponement of pay revision even to a future date. Thereafter, each and every transport corporation placed the matter before their respective Board of Directors and all the corporations had resolved to adopt the G.O.Ms.No.303 and G.O.Ms.No.319, subject to the conditions that may be prescribed by the Government for the monetary benefit with effect from 01.10.2017. Thereafter, the Government in G.O.Ms.No.134, dated 09.04.2018 passed orders extending the Tamil Nadu Revised Pay Rules 2017 and applicable allowances to the employees of the State Transport Undertakings with a condition that the entire financial commitment should be borne by the Corporation and they should not seek financial assistance from the Government. Thereafter, the Pension Fund Trust also issued a circular dated 09.05.2018 regarding the implementation of the revised pay scales. Regarding the modality of implementation in respect of the pensioners, an Expert Committee was also constituted. Purusant to the recommendations of the Expert Committee, the Tamil Nadu State Transport Corporation Employees Pension Fund Trust proposed to implement the 7th Pay Commission Recommendations with prospective monetary benefits and also to continue the dearness allowance without any change. Aggrieved by the



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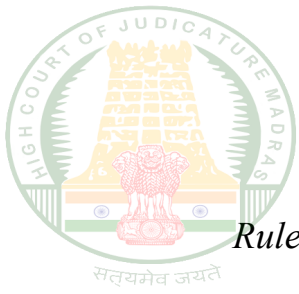
prospective effect of 7th Pay Commission benefits, the 1st respondent herein filed the writ petition in W.P.(MD)No.12614 of 2020. The Writ Court, by a common order dated 02.03.2023, directed that monetary benefits shall be given to the employees of the transport corporation retrospectively as per the 7th Pay Commission. Challenging the said order, the Government has filed this appeal.

3.Today, when the Writ Appeal is taken up for hearing, the learned counsel appearing for the appellant brought to the notice of this Court that against one of the Writ Petitions ie., W.P.(MD)No.1147 of 2020 disposed of by a very same common order impugned herein, a Writ Appeal in W.A.(MD)No.1240 of 2023 was filed and a co-ordinate Division Bench of this Court by judgment dated 13.09.2023 has dismissed the appeal, confirming the impugned common order. Therefore, this Writ Appeal also shall meet the same fate.

4.The relevant portion of the judgment dated 13.09.2023 made in W.A.(MD)No.1240 of 2023 is extracted hereunder:-

“5. We have considered the rival submissions made on either side and perused the material records of the case.

5.1. The respondents 1 and 2, the retired employees, are aggrieved by two specific clauses in the impugned Government Order. Firstly, it can be seen from Rule 20-A quoted above that the Statutory



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Rules governing the pension, clearly envisages that the pensioners are eligible for dearness allowance at the rate that would be determined by the Government of Tamil Nadu. It goes without saying that the dearness allowance which is fixed for the Government employees from time to time is made applicable to the pensioners of the Transport Corporations. While that being the position, the impugned Government Order which is an executive instruction cannot override the Statutory Rule. The said clause in the impugned Government Order virtually has the effect of nullifying Rule 20-A of the Statutory Rules and as such we have no hesitation in holding that the said clause of the Government Order is invalid.

5.2. As far as extending the revised pay and its benefits are concerned, firstly, it can be seen that it was within the realm of the Government to extend or not to extend the revised pay. As a matter of fact, it is the Government which had decided to extend the benefits to the State Public Sector Undertakings vide G.O.Ms.No.319 dated 26.10.2017. As per the above Government Order, it is expressly made clear that while extending, considering the financial position, it can be made applicable with prospective effect or from a future date etc., and the Government specifically directed that the subject be placed before the Board of Directors. The Board of Directors of the State Owned Transport Corporations have categorically resolved to extend the benefit to the employees with effect from 01.01.2016 and the monetary benefit with effect from 01.10.2017 subject to the approval of the Government. The Government in turn had approved the same vide G.O.Ms.No.134 dated 09.05.2018. As a matter of fact, based on



the said Government Order, a circular was issued on 09.05.2018 which reads as follows:

“Hence, it is requested to give necessary instruction to revise the pay and pension for the following employees:

(1) The employees covered under 12(3) Wage Settlement and retired/expired/Exist between 01.09.2016 to 31.12.2017.

(2) The Supervisors/Officers eligible for 7th Pay Commission and retired/Expired/Exit between 01.01.2016 to 31.03.2018.

(3) The pay in respect of the above employees shall be revised as per the references cited and the pension shall be revised and the proposals have to be sent to their respective audit centres like Erode, Dindigul and Chennai after proper authentication on or before 31.05.2018. Moreover, the individual wise monthly commitment details to be sent to the TNSSTC EPF Trust, Chennai through Hard copy and soft copy (E-mail) before 31.05.2018.”

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



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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.Sethuraman* 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)



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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.”



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5.The said judgment is sought to be reviewed in Rev.Aplc.(MD)No.36 of 2024, which was dismissed by this Court, vide order dated 10.09.2024. The relevant portion of the same is extracted hereunder:-

“22. Thus looking from any angle, the grounds raised on behalf of the State as well as the review applications are unacceptable. Apart from merits, the attempt is only to re-argue and re-litigate the concluded matter. The selfsame arguments were also made in the earlier round, which were rejected and the matter had attained finality up to the Hon'ble Supreme Court of India. No new material or argument which is now made to review the judgment. The grounds argued by the learned Advocate General would also not fall within the contours of the grounds of review as enunciated under Order XLVII Rule 1 of the Code of Civil Procedure.

23. Therefore, finding no merits, the Writ Appeal as well as the Review Application stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.”

6.In the light of the aforesaid judgment of the Division Bench, confirming the very same common order impugned herein, we are of the view that



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the present appeal also deserves dismissal. Accordingly, this Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[J.N.B., J.] & [S.S.Y., J.]
25.02.2025

NCC : Yes / No
Index : Yes / No

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