



W.P.(MD)No.8858 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2025

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THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD)No.8858 of 2019

and

W.M.P.(MD)No.6880 of 2019

A.Liaquet Ali

... Petitioner

Vs.

- 1.Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Rep.by its Managing Director,
Bye Pass Road, Madurai-625 016.
- 2.The Deputy Manager (Provident Fund),
Tamil Nadu State Transport Corporation Ltd.,
Madurai Division,
Bye Pass Road, Madurai-625 016.
- 3.The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai, Chennai-600 002.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent in Ref.No.Th.A.Po.Ka./Madurai/P.F.5/1604 dated 25.02.2019, quash the same and consequently forbear the respondents either from demanding



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repayment of Dearness Allowance or from making recovery of the petitioner's Dearness Allowance from his monthly pension in any manner on the ground that he stayed or is staying in abroad.

For Petitioner : Mr.S.Govindan,
For M/s.A.Rahul

For R1 : Mr.J.Senthil Kumaraiah

For R3 : Mr.S.C.Herold Singh

ORDER

Under assail is the show cause notice dated 25.02.2019 directing the petitioner to pay the Dearness Allowance.

2.The case of the petitioner is that he joined as Clerk in the year 1980 and his service has been regularized in July 1982 and he was promoted as Assistant. Thereafter, he was allowed to retire from service on 30.06.2013 under voluntarily retirement scheme. In the year 2013 onwards he is running his family on his pension amount alone. The second respondent issued a notice dated 14.02.2019 stating that the petitioner was frequently went to Soudi Arabia where he as residing for prolonged period and he stayed in India only for a limited period and hence, the petitioner is ineligible to get Dearness Allowance for the stay



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in abroad. He was directed to remit a sum of Rs.63,264/- towards Dearness Allowance which was paid for the year 2018, within a period of 7 days from the receipt of the said notice. In the notice, Rule 50 A(III) of the Tamil Nadu Pension Rules is cited and informed that the Dearness Allowance is not admissible to him as he stayed abroad. Thereafter, the second respondent again sent the impugned order dated 25.02.2019 citing the same Rule. The above said Rule is only applicable to the Government Servant alone. There is no specific contention with regard to the withholding of Dearness Allowance to the pensioner who stay in abroad in the TNSTC Employees Pension Fund Trust Rules. Hence, demand made by the second respondent is illegal as Tamil Nadu Pension Rules 1978 is not applicable to the petitioner. Hence, the present writ petition.

3.The learned counsel appearing for the petitioner would submit that Rule 50 A(III) of the Tamil Nadu Pension Rules is cited in the order impugned and it is also stated that Dearness Allowance is not admissible since the petitioner stayed in abroad. The above said Rule is applicable only to the Government Servant. He would further submit that the petitioner is not employed anywhere and after paying Dearness



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Allowance, the respondents are not entitled to get back the amount. To strengthen his contention, he had relied upon the decision of this Court in W.P.(MD)No.12864 of 2012 dated 06.03.2018 to show that there was no misrepresentation or otherwise on the part of the writ petitioner and the recovery cannot be made. He has relied upon the decision of this Court in W.P.(MD)No.19006 of 2022 dated 18.10.2024 to show that recovery cannot be made after getting Dearness Allowance and excess amount if any paid to the petitioner and the same has to be recovered from the concerned official, who had committed mistake.

4.Per contra, the learned counsel appearing for the first respondent would submit that the petitioner is retired from Corporation and Rule 20(A)(3) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules enumerates that Dearness Allowance is not admissible the pensioners stay abroad. The petitioner himself admitted in his affidavit that he used to visit Dubai now and then. He would draw attention of this Court to the Government Order in G.O. (Ms.)No.437, Transport (E) Department, dated 08.11.2017.



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5.The learned counsel appearing for the third respondent would submit that it is clerical mistake and it has to be mentioned as Rule 20(A)(iii) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules, instead of, it has been mentioned as Rule 50 A(III). He would submit that the Rulings relied on by the learned counsel for the petitioner are not applicable to the present case on hand. Since the Rulings relied on by the petitioner with regard to the excess payment paid to the petitioner therein. In the instant case, with regard to the Dearness Allowance, the contents stipulates under Rule 20(A)(iii) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules is violated by the petitioner and therefore, the order impugned came to be passed directing the petitioner to pay the amount or the amount will be deducted from the pension. To strengthen his contention, he has relied upon the decision of this Court in W.P.No.13853 of 2021 dated 13.09.2024 to show that the petitioner stayed abroad is not entitled for Dearness Allowance.

6.This Court has considered the submission made on either side and perused the materials on record.



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7. According to the petitioner he used to visit Dubai now and then and travel charges alone borne by his son, who is residing in Dubai and other expenses are met by the petitioner from his pension amount. It is relevant to extract Rule 20(A)(iii) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules as hereunder:-

20.A Dearness Allowance to Pensioners

(i) In addition to the basic pension, the pensioners are eligible for nominal Dearness Allowance at the rates that may be determined by the Government of Tamil Nadu.

(ii) If a pensioner is re-employed under the Central Government or a State Government or a Government Undertaking or a Corporation or an Autonomous Body or a Legal Fund in India or abroad, he shall not be eligible to draw dearness allowance on pension during the period of such re-employment.

(iii) Dearness allowance is also not admissible during the pensioners stay abroad.

8. It is also relevant to cite the decision relied on by the learned counsel appearing for the third respondent in W.P.No.13853 of 2021 as hereunder:-

4. The learned Additional Government Pleader appearing for the first respondent submitted that the petitioner has earlier filed a Writ Petition in W.P.No.



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27733 of 2019 and this Court by an order dated 19.09.2019, had directed the 4th respondent to consider the representation of the petitioner dated 08.06.2018. The order of this Court was complied by the Corporation by sending Lr.No.27733/Pen.1/TNSTC-KPM/19 dated 20.05.2020 stating that the petitioner is not eligible for dearness allowance while at abroad as per the Government Order in G.O.Ms.NO.437, Transport (E) Department, dated 08.11.2017. The guidelines of the Government Order stated that as per Rule 50A(iii) of Tamilnadu Pension Rules 1978, the pensioners are not eligible to get dearness allowances for the period of stay in abroad. In that Government Order itself, it was mentioned that Tamil Nadu State Transport Corporation Employees Pension Fund Trust requested to accord approval to amend the existing Rule 20A of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules.

5. Considering the submissions made by the learned Additional Government Pleader and on perusal of the amended Rule 20A(iii) of the TNSTC Employees Pension Fund Rules and Rule 50A(iii) of the Tamilnadu Pension Rules 1978, this Court finds that the petitioner who stayed abroad from September 2016 to January 2017, is not entitled for dearness allowance. Hence, this Writ Petition has no merits and the same is liable to be dismissed.



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9.As per the Government Order in G.O.(Ms.)No.437, Transport (E) Department, dated 08.11.2017 and as per the amended Rule 20(A) (iii) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules, the Dearness Allowance is not admissible during the pensioners stay abroad. Therefore, this Court is of the view that the petitioner, who stayed abroad in the year 2018 is not entitled for Dearness Allowance. More over the petitioner has challenged the show cause notice issued by the authorities concerned. He has to submit his explanation. It is only a initial stage, at this juncture, this Court is not inclined to interfere with the impugned show cause notice. There is no merit in this writ petition and the same is liable to be dismissed.

10.In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

NCC : Yes / No
Index : Yes / No
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