

?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 22.10.2018

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THE HON-BLE MR.JUSTICE S.VAIDYANATHAN

+W.P.(MD) No.21550 of 2018

and

W.M.P(MD)No.19443 of 2018

#V.Selvaraj

Son of Velraj Swami,

Special Grade Driver(Retd),

Staff No.0828,

Tamil Nadu State Transport

Corporation(Tirunelveli) Limited,

Tirunelveli Region.

Residing at

181/14, Nethaji Road,

Kokkarakulam,

Tirunelveli ? 627 009. .. Petitioner/Petitioner

Vs.

\$1.The Managing Director,

The Tamil Nadu State Transport Corporation

(Kumbakonam) Limited,

Tirunelveli ~11.

2.The General Manager,

The Tamil Nadu State Transport

Corporation(Kumbakonam) Limited,

Tirunelveli Region,

Tirunelveli ~03. .. Respondents/Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of declaration declaring the action of the respondents in imposing a recovery of Rs.38,700/~ on the Petitioner towards --unaffected or non~implemented increment cut-- and paying him gratuity based on the Dearness Allowance at the rate of 90% instead of 100% as illegal, arbitrary and consequently direct the respondents to settle and pay the Petitioner Rs.61,171/~(recovery Rs.38,700/~ + Difference amount in gratuity of Rs.23,011/~) towards amount recovered from the Petitioner-s gratuity and difference amount in gratuity with interest at the rate of 18% per annum payable to the Petitioner to him from the date of retirement to till the date of actual payment.

!For Petitioner : Mr.A.Rahul

^For Respondents : Mr.K.Sathiya Singh

:ORDER

This Writ Petition has been filed, for issuance of a writ of declaration declaring the action of the respondents in imposing a recovery of Rs.38,700/~ on the Petitioner towards --unaffected or non~implemented increment cut-- and paying him gratuity based on the Dearness Allowance at the rate of 90% instead of 100% as illegal, arbitrary and consequently direct the respondents to settle and pay the Petitioner Rs.61,171/~(recovery Rs.38,700/~ + Difference amount in gratuity of Rs.23,011/~) towards amount recovered from the Petitioner-s gratuity and difference amount in gratuity with interest at the rate of 18% per annum payable to the Petitioner to him from the date of retirement to till the date of actual payment.

2.Mr.K.Sathiya Singh, learned Standing Counsel takes notice for the respondents/Transport Corporation. By consent of both parties, the main Writ Petition is taken up for final disposal at the stage of admission itself.

3.The aforesaid prayer is two~folded. As far as the first portion of the prayer is concerned, namely recovery of Rs.38,700/~ towards --unaffected or non implemented increment cut-- has been decided by this Court in W.A.No.465 of 2013 and Batch, dated 30.6.2017 and the said decision has been confirmed by the Honourable Apex Court on 9.2.2018 in S.L.P(Civil)Diary No.1755 of 2018. Insofar as the other aspect of the prayer that the Dearness Allowance should be taken as 100% instead of 90%, as has been done earlier, which is contrary to G.O(MS)No.55, Transport (D)Department, dated 4.6.2014, wherein, it has been categorically stated that 100% of Dearness Allowance has got to be taken for the purpose of calculating the gratuity w.e.f. 1.4.2014, as the Petitioner has sought for declaration, it is open to the Petitioner to make a fresh representation to the respondents concerned within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, it is open to the respondents concerned to decide the issue within a period of two months thereafter and if the Petitioner is otherwise eligible, the same has got to be extended to the Petitioner within a period of one month thereafter.

4.As far as the other portion of the prayer is concerned, a sum of Rs.20,000/~ will have to be paid on or before 1.11.2018 and the remaining amount of Rs.18,700/~ shall be paid on or before 31.12.2018.

5.With the above directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

To:

1.The Managing Director,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Tirunelveli ~11.

2.The General Manager,
The Tamil Nadu State Transport
Corporation(Kumbakonam) Limited,
Tirunelveli Region,
Tirunelveli ~03.