

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/7/2004

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THE HONOURABLE MR.JUSTICE A.K.RAJAN

W.P.No.15688 of 1997

to

W.P.NO.15691 of 1997

The Superintending Engineer,
Villupuram Ramasamy
Padayatchiar Electricity
Distribution Circle,
Villupuram. ..Petitioner in all
the W.Ps.

-VS-

1.The Presiding Officer,
Labour Court,
Cuddalore. ..First respondent
in all the W.Ps.

2.R.Subramanian ..2nd respondent in
W.P.No.15688/1997

3.M.L.Perumal ..2nd respondent in
W.P.No.15689/1997

4.N.Kantha ..2nd respondent in
W.P.No.15690/1997

5.M.Kamala ..2nd respondent in
W.P.No.15691/1997

For petitioner : Mr.V.Radhakrishnan

For respondents: No appearance.

Writ petitions filed under Article 226 of the Constitution of India
praying this Court to issue a writ of certiorari as stated therein.

:O R D E R

These petitions are filed to quash the awards of the Labour Court, Cuddalore, dated 28.11.1995, 28.11.1995, 29.2.1996 and 29.2.1996 in Claim Petition Nos.216/92, 362/92, 61/93 and 8/95 respectively.

2. The second respondent in each of the cases were employed in Tamil Nadu Electricity Board and retired on superannuation; they were paid all the retirement benefits. Several years after their retirement, claim petitions were filed under Section 33-C(2) of the Industrial Disputes Act, claiming an amount as payable towards special contribution. They claimed that on the basis of Regulation 37 of the Tamil Nadu Electricity Board Employees Contributory Provident Fund Regulations, they were entitled to receive the amount as special contribution. As per the Board Proceedings, special contribution is payable taking into account only a portion of D.A. together with basic pay for each completed year of service and it is payable subject to the maximum of 15 months pay. Accordingly, it was sanctioned to them. The Labour Court without properly considering the scope of Regulation 37 of the said Regulations and without referring to the contentions raised by the Board, directed the petitioner to pay the amount. Hence, the present writ petitions.

2. The respondents are not present in spite of service of notice on them. Therefore, the Orders are passed on the basis of the arguments advanced by the petitioner.

3. The learned counsel appearing for the petitioner submitted that the claim petitions can be filed only with respect to the accrued amounts. According to him, when the amount itself is in dispute no claim petition can be filed; it has to be determined only by way of Industrial Dispute. The Labour Court has allowed the claim petitions on the ground that the Board Proceedings No.150, dated 2.2.1978 has not been filed before the Labour Court. In those circumstances, the counsel for the petitioner submitted that unless opportunities are given to the petitioner to file the Board Proceedings, it would cause prejudice to the interests of the Board.

The Board Proceedings No.150 is placed before this Court by way of Typed set, which is as follows:

" TAMIL NADU ELECTRICITY BOARD

Abstract

Pension - Tamil Nadu Electricity Board - Treatment of portion of Dearness Allowance for purpose of pension and gratuity - Ordered.

BOARD'S PROCEEDINGS MS.No.150 Dated 2nd February, 1978.

Read:-

- i. B.P.Ms.No.2064, dated 2.12.1974.
- ii. B.P.Ms.No.1447, dated 10.10.1975.
- iii. B.P.Ms.No.1258, dated 2.8.1976.

PROCEEDINGS:

The Tamil Nadu Electricity Board directs that in the case of the employees of the Board retiring and retired from 1.2.1975 a portion of

Dearness Allowance as specified in Annexure shall be reckoned as pay for purpose of calculation of pension and gratuity.

2. The Dearness Allowance sanctioned in four spells to the pensioners of the Board (i.e. Rs.5x4=20) in the B.P. first cited will not be applicable to the pensioners who retired on or after 1.2.1975 as they are benefited by an increase in pension consequent on reckoning the Dearness Allowance of Rs.55/- and Rs.70/- as the case may be. In respect of cases where Dearness Allowance has already been paid with reference to B.P. First cited, the difference alone may be paid.

(BY ORDER OF THE BOARD)

A.P.Bhatikar

Secretary.

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ANNEXURE

Pay Range Rate of D.A.

Pay upto Rs.299/- .. Rs.55/-Pay

Rs.300/and above .. Rs.70/-"

Another Board Proceedings No.129, dated 1.9.1983, is as follows:

PART - III

FINANCE

PENSION - Tamil Nadu Electricity Board - Treatment of portion of Dearness Allowance for purposes of Pension and Gratuity Ordered.

B.P.Ms.(FB)No.129(Secretariat Branch)Dated the 1st Sept.83

Avani 16,Ruthrothkaari

Tiruvalluvar Aandu,2014

Read:

(i) B.P.Ms.No.150, dated 2.2.1978.

(ii) B.P.Ms.No.500, dated 19.3.1979.

(iii)Memo No.7814/Sectt./M1/80-1, dt.18.4.1980.

(iv) Tamil Nadu Electricity Board Officials

Association letter dt.19.12.1981.

Proceedings:

In B.P.Ms.No.150, dated 2.2.1978, the Board issued orders that, in the case of the employees of the Board retiring and retired on or after 1.2.1975, a portion of Dearness Allowance as specified below be reckoned as pay for purpose of calculation of Pension and Gratuity.

Pay Range Rate of Dearness Allowance

Pay upto Rs.299/- Rs.55/-

Pay Rs.300/- and above Rs.70/-

They were also allowed Dearness allowance at Rs.17/- to Rs.47/- p.m. and two pension increase viz.Rs.5/- and 5% of basic pension subject to minimum of Rs.10/- and maximum of Rs.25/-. With effect from 1.12.1979, when the scales of pay of Board emplo were revised, all these benefits have been withdrawn in respect of those who retired after 1.12.1979. However, a portion of Dearness Allowance viz. Rs.60.75 being the cash equivalent of 74 points consumer price Index from 247 to 320 points, which was merged with their pay, was taken into account for purpose of calculation of pension. Since, then, the pensioners have been representing that the balance of Dearness Allowance should also be taken into account for the purpose of reckoning of pension and gratuity.

2. After careful consideration, the Tamil Nadu Electricity Board directs that in addition to the merger of Dearness Allowance of Rs.60.75 with basic pay already ordered in B.P.Ms.No.252, Sectt. Dated 14.11.1979 and B.P.Ms.No.255 (Sectt.) dated 19.11.1979, the following concessions be also allowed for those who retired on or after 1.12.1979:-

(i) Two increase viz.Rs.5/- and 5% of basic pension subject to minimum of Rs.10/- and maximum of Rs.25/- as ordered in B.P.Ms.No.50, dated 8.1.1979 and B.P.Ms.No.106, dated 17.10.1979.

ii) The amount of Dearness Allowance of Rs.25/- due to increase of Consumer Price Index from 320 to 340 basis for neutralisation as on the date of revision of pay scales 1.12.1979 may be reckoned as pay for calculation of pension and Death-cum-Retirement Gratuity.

(By Order of the Board)

S.Shanmugam,
Secretary."

4. From a reading of these two proceedings it is clear that it provides for the payment of the D.A. for the purpose of pension and gratuity. The present dispute is not with respect to pension or gratuity, but it is with respect to payment of special contribution. The special contribution is neither altered nor abolished by this Board Proceedings. Therefore the contention of the petitioner that as per the Board Proceedings, referred to above, they are only eligible for a portion of the D.A. and that the special contribution was also altered, is not acceptable. Hence, the contention of the writ petitioner is not acceptable. Therefore, the awards of the Labour Court do not suffer from any illegality. Hence the petitions are dismissed.

Index: Yes

Internet: Yes

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