

(2000) 09 MAD CK 0052

In the Madras High Court

Case No : Writ Petition No's. 826 of 1998 and 4389 of 2000 and W.M.P. No. 1152 and 1153 of 1998 and 6754, 6755 of 2000

Tamil Nadu Water Supply and Drainage Board Workers
Federation

APPELLANT

Vs

Tamil Nadu Water Supply and Drainage Board and Others

RESPONDENT

Date of Decision : 15-09-2000

Acts Referred:

Citation : (2001) 1 LLJ 467

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : S. Arunachalam, for the Appellant; T.R. Rajagopalan, A.A.G. for Sudarshanasundar and Malarvizhi Udayakumar for Respondent No. 1 and A. Paramasivam, G.A. for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—These Writ Petitions and WMPs coming on for orders as to admission on Thursday August 31, 2000 upon perusing, the petitions and the affidavits filed in support thereof and upon hearing the arguments of Mr. S. Arunachalam advocate for the petitioner and of Mr. T.R. Rajagopalan, Additional Advocate General for Ms. Sudarshanasundar advocate for the first Respondent and of Mr. A. Paramasivam, Government Advocate for the Respondents 2 and 3 and having stood over for consideration till this day, the Court made the following Order:

In W.P. No. 826 of 1998, the petitioner, a Registered Association has prayed for the issue of a writ certiorarified mandamus to call for the records connected with the proceedings of the first respondent-Board in No. 998/Estt(Per)/A 198-1 dated January 9, 1998 passed by the first respondent and quash the same insofar as the first respondent had ordered investment of the ad hoc payment of a portion of the arrears viz., Rs. 2000/- in the G.P.F. account of the employees and direct the respondents to pay the said arrears in cash.

2. This Court ordered notice of motion on March 18, 1998 and the writ petition came to be listed on various dates.

3. W.P. Nos. 4389 of 2000 has been filed by the very same petitioner-Registered Association representing the workmen employed in the first respondent-Board praying for the issue of a writ of certiorarified mandamus to call for the records connected with the Board Proceedings in B.P.Ms. No. 25, TWAD (Estt. Per) WING, dated February 4, 2000, passed by the first respondent as well as G.O.Ms. No. 440, dated October 8, 1999 : passed by the respondent-State Government, quash the portion of the above orders in so far as they purport to impound the arrears of D. A. for the period from July 1, 1999 to September 30, 1999 and credit the same in the G.P.F. Account and consequently direct the respondents to pay the said arrears forthwith to all the employees of the said Board.

4. Heard Mr. S. Arunachalam, learned, counsel appearing for the petitioner in both the writ petitions. Mr. T.R. Rajagopalan, learned Additional Advocate General and senior counsel appearing on behalf of the respondents in both the writ petitions.

5. In fact, this Court following the orders passed in an identical writ petition, passed orders after hearing the counsel for the petitioner. At that stage, the learned counsel for the respondents filed W.M.P. No. 9364 in W.P. No. 826 of 1998 to set aside the order dated March 21, 2000 passed in W.P. No. 826 of 1998, as the counsel for the Respondent could not be present at the hearing. This Court while following the earlier orders allowed the writ petition and issued directions. However, at the request of the learned counsel for the respondents, the order dated March 21, 2000 was recalled with the consent of the counsel for either side and the matter was taken up on August 31, 2000 for fresh hearing.

6. Mr. S. Arunachalam, the learned counsel for the petitioner relied upon the earlier pronouncements of the Division Bench of this Court as well as an order passed by this Court in an identical situation in W.P. No. 10474 of 1999 etc., batch, dated August II, 1999 in Central Organisation of Tamil Nadu Electricity Employees and Ors. v. Tamil Nadu Electricity Board and also the order passed in W.P. No. 9903 of 1999 on September 28, 1999 in Tamil Nadu Water Supply and Drainage Board Workers Federation v. Tamil Nadu Water Supply and Drainage Board and Ors.

7. According to the learned counsel for the petitioner, the said pronouncements squarely applies to the facts of the present case and no further arguments are required. Ms. S. Sudarshanasundar, and Ms. Malarvizhi. Udayakumar, sought to contend that the said earlier pronouncements of this Court if followed would cause undue hardship and financial constraints on the respondent-TWAD Board and that the respondent is bound by the directions issued by the State Government and they cannot be compelled to pay the arrears, except in accordance with the directions issued by the State Government.

8. According to the learned counsel for the respondents if a direction is given for

lump sum payment as ordered by this Court in the earlier writ petitions, the financial burden of the respondent-TWAD Board will be heavy and it will be in financial difficulties.

9. This Court pointed out that it would not be proper for this Court to deviate from the earlier pronouncements as this has to be consistent and also this Court is bound by the earlier Division Bench pronouncement as well. The learned counsel appearing for the respondents took time and ultimately represented that the learned Additional Advocate General had been engaged in this case specially to appear on behalf of the respondents. Accordingly this Court after recalling the earlier orders heard the learned Additional Advocate General, appearing for the respondents. The learned Additional Advocate General; while making his submissions has to necessarily state that the earlier pronouncements of this Court has to be followed and has also fairly stated that the earlier orders passed by this Court are to be followed in these two writ petitions as well.

10. In fact, the learned Additional Advocate General fairly stated that the legal position is well settled and the view taken by this Court allowing the writ petition in W.P. No. 826 of 1998 on March 21, 2000 cannot be assailed and no exception could be taken and the same orders be passed in both the writ petitions herein also. Accordingly there will be an order in these two writ petitions as well.

11. The point raised in this writ petition is no longer *res integra*, identical question came before this Court and has been considered by M. SRINIVASAN, J., (as he then was) in W.P. Nos. 8574 to 8578 of 1992 dated October 16, 1992 as well as by this Court in W.P. Nos. 10474 of 1999, etc., batch dated August 11, 1999 wherein this Court held thus:

12. "The dearness Allowance is part of the wages as seen from the inclusive definition of the expression "wages". Dearness Allowance is an additional payment made by an employer to his employees to compensate them to certain extent for the rise in the cost of living. The process of rise in prices continues with the passage of time and improvement in economic conditions. Even the fair wage, fixed for the time being, tends to sag downwards and adjustment in wage levels becomes necessary Dearness Allowance is directly related to the erosion of real wages by constant upward spiralling of the prices of basic necessities and as a sequel to the inflationary input, the fall in purchasing power of the rupees. Dearness Allowance is inextricably intertwined with price rise and by its very form and name has an intimate relation to the prevailing price structure of basic necessities at the centre in which the workman is employed.

The very object of payment of Dearness Allowance is intended as protection of persons whose salaries were at the subsistence level to protect them against adverse affects of rise in prices and it is linked to the cost of living index or it is being given by way of flat increases. As such, to meet the increase in cost, it is essential that such Dearness Allowance which is a component of the wages as seen from the expression has to be paid in cash.

It is to be pointed out that the settlement entered between the petitioners-Union and the Respondent-Electricity Board in no way enables the respondent to postpone the payment of Dearness Allowance or to credit the same to the Provident Fund of the respective employee. It is incumbent on the part of the respondent to pay the Dearness Allowance along with the salary for each month. Merely because announcement is being made on a later date for the earlier period, there is no justification at all to postpone the payment or credit arrears of Dearness Allowance to the Provident Fund Account unless such a course is agreed to by the individual employee or the settlement between the employer and the employees provides for the same."

12. In the circumstances while following the earlier orders the above writ petitions are allowed, but subject to the following conditions:

(i) Wherever the individual employee confirms and accepts the credit of arrears of Dearness Allowance on his Provident Fund Account, the same need not be withdrawn by the Respondent Board and the individual employee may be permitted to avail a loan or part payment as and when he is eligible for the same as per existing rules and regulations.

(ii) the respondent-Board shall withdraw the arrears of Dearness allowance credited to the Provident Fund account of the individual employee on a written request made by the individual employee and disburse the same and all such disbursements shall be effected within three months from the date on which the individual employee of the Respondent Board makes a request to his Pay Drawing Authority.

13. Both the writ petitions are allowed in the above terms and the parties shall bear their respective costs in these two writ petitions. Consequently, connected W.M.Ps. are closed.