

Writ Appeal No.665 of 2018
and
C.M.P.No.6352 of 2018

S.MANIKUMAR.J
and
M.GOVINDARAJ.J

ORDER

(Order of this Court was made by S.MANIKUMAR, J.)

After considering the grounds of challenge, materials on record, submissions of the learned Advocate General and the judgments in *G.Easwaran v. The Government of Tamil Nadu (DB)* reported in **2015 (1) CWC 337** and *C.L.Pasupathy v. Engineer in Chief (WRO)* reported in **2009 (2) MLJ 491**, on 28.03.2018, we passed the following order:

23. *Though financial constraint is expressed by the Transport corporation and having regard to the settled principles of law that interest has to be paid, on the belated payment of retirement benefits and hence, we direct 8 Transport corporations, to pay the interest, as ordered by the writ Court, in all the writ petitions. A sum of Rs.394.69 crores is the balance amount to be paid towards interest to the contempt petitioners. The said amount is directed to be paid on or before 14/4/2018. By this order, we have addressed the grievance of only 596 contempt petitioners, out of 25,000 retired employees, who were paid retirement benefits belatedly.*

24. *Contention that the order made in W.A. Nos.383 to 457 of 2015 dated 12.06.2015 can be made applicable only to the respondents/retired employees therein, and not to others, cannot be accepted. All the retired employees are similarly situated, and therefore they cannot be treated differently. Financial constraint, taken note of while passing orders in W.A. Nos.383 to 457 of 2015 dated 12.06.2015, is the same, in respect of others also. Therefore the other retired employees who are also similarly situated are entitled to get interest on the belated payment. In this regard, we deem it fit to rely on a decision of a Hon'ble Division Bench of this Court, in G.Easwaran V. The Government of Tamil Nadu (DB) reported in 2015 (1) CWC 337, at paragraphs 22 to 24 held as follows:-*

“22. In this context, we feel it appropriate to refer to a recent decision of the Supreme Court in State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others, 2015 (1) SCC 347, wherein, the Apex Court dealt with the issue as to the entitlement of benefit of judgment in rem with an intention to benefit all similarly situated persons irrespective of whether they had approached the Court or not. It is held therein that when a particular set of employees is given relief by Court, all other identically situated persons should be treated alike by extending the same benefit, since not doing so would amount to

discrimination and be violative of Article 14 of the Constitution of India.

23. It is true, implementation of the Government Order in question to the teachers/individuals will cause enormous burden to the State exchequer and it is, certainly, a matter for concern. However, the views taken by the earlier Benches of this Court for extending the benefit to the employees therein are equally applicable to these cases in hand, as these individuals also are similarly placed to those in the earlier litigations. But, the only point to be considered in these cases is, the individuals have approached the Court belatedly, which delay, according to them, was due to the pendency of the decision in those matters. However, as regards the claim of arrears for the period taken by the individuals in these matters in making a belated approach, we are not inclined to pass any orders. Therefore, we leave it open to the State to take a decision as to the period of entitlement with regard to the said issue in accordance with law.

24. Subject to the above observation, following the Division Bench decision of this Court in W.P.No.8747 of 2009, dated 14.07.2009, and also the subsequent decision of the Supreme Court in Special Leave Petition in C.C.No.2746 of 2010, dated

23.04.2010, there Writ Appeals and Writ Petitions are allowed to the extent indicated. No costs. Consequently, the connected M.Ps. are closed.”

25. There is every possibility of others, filing writ petitions, claiming interest on belated payment. That apart, there may be some cases which had already been decided by the Hon'ble Division Benches of this Court, both at the Principal and Madurai Bench. Decisions made in such of those cases by a Hon'ble Division Bench cannot be modified by this order. This Court cannot expect all 25,000 retired employees, to file writ petitions, for similar orders and that the same would be only repetitive and unwarranted. As liability of the Transport Corporations, to pay interest, on the belated payment of retirement benefits, is confirmed, keeping in mind the non-payment of interest for several thousands of employees, we invoke the doctrine of **judgment in rem** to other cases.

26. In **C.L.Pasupathy v. Engineer in Chief (WRO)** reported in **2009 (2) MLJ 491**, distinction between judgment-in-rem and judgment-in-persona has been explained. At Paragraphs 27 to 29, this Court held as follows:

"Historically the term judgement "in rem" was used in Roman law in connection with actio but not in

connection with "jus actio in personam". The effect of "actio in rem" was to conclude against all mankind, but the effect of "actio in personam" was to conclude with regard to the individual only. After the Roman forms of procedure had passed away, the term "in rem" survived to express the effect of an action "in rem" and gradually, it came to import "generally".

28. The judgements "in rem" signified as judgements which are good against all mankind and "judgements in personam" signified the judgements which are good only against the individuals who are parties to them and their privies. The point adjudicated upon in a "judgement in rem" is always as to the status of the "res" and is conclusive against the world as to that status, whereas in a judgement "in personam", the point whatever it may be, which is adjudicated upon, not being as to the status of the "res" is conclusive only between the parties or privies. Reference can be made to Firm of **Radhakrishnan Vs. Gangabai, 1928 S 121, Ballantyne vs. Mackinson 1896 2 QB 455.**

29. Courts have held that, "Judgement in rem", operates on a thing or status rather than against the person and binds all persons to the extent of their interest in the thing, whether or not they were parties to the proceedings. The judgement "in rem", as distinguished from judgement "in personam" is an adjudication of some particular thing or subject

matter, which is the subject of controversy, by a competent Tribunal, and having the binding effect of all persons having interests, whether or not joined as parties to the proceedings, in so far as their interests in the "res" are concerned. In determining whether a judgement is "in rem", the effect of the judgement is to be considered and it is tested by matters of substance, rather than by measure of any particular draft or form."

27. Learned Advocate General submitted that Transport Corporations would come out with details and the time within which the Transport Corporations would be in a position to pay interest, for the belated payment of retirement benefits to all the employees, which may work out to about Rs.500 crores or little more than that. While confirming the judgment of the writ Court, made in W.P.No.43667 of 2016, dated 2/2/2017, we direct the Managing Directors of 8 transport Corporations, including the appellant herein, to disburse the balance interest portion of 394.69 crores, to the contempt petitioners on or before 14/4/2018. We make it clear that extension of time will not be granted.

Post on 27/4/2018.

passed the following order:

" A sum of Rs.3,94,69,000/- directed to be paid to the contempt petitioners, on or before 14.04.2018, has been paid. Though, on 28.03.2018, an estimate of Rs.500 Crores or little more than that was tentatively submitted for payment of interest to the retired employees, on this day, when the matter came up for further hearing, Mr.T.N.Rajagopalan, learned Government Pleader, submitted that other than those who had filed contempt petitions, several writ petitions have been filed and orders issued. Interest due and payable to them (writ petitioners), not filed contempt petition, is Rs.59.37 Crores. For rest of the employees who have not filed writ petitions, but interest due and payable is Rs.142.30 Crores. Net amount towards interest due and payable is Rs.201.67 Crores.

2. Learned Government Pleader further submitted that the Transport Corporations are facing financial crunch, which has been explained in the earlier proceedings. Corporations are unable to meet out the expenditure. Considering the above, he submitted that a sum of Rs.20.00 Crores would be deposited towards payment of arrears of interest to those who have filed the writ petitions and obtained orders and in respect of others, payment schedule would be submitted by the first week of June 2018.

3. Per contra, Mr.V.Ajoy Khose and

Mr.A.Rajendiran, learned counsel for the retired employees, submitted that, though interest is payable on leave salary also, which is a component of retirement benefits, as a policy, the Transport Corporations do not pay interest on leave salary, which according to them, is a deprivation of right under Article 21 of the Constitution of India. When denial of interest of leave salary was sought to be substantiated on the basis of the Government of India decision, by the respondents/Corporations, placing reliance on S.K.Dua vs. State of Haryana reported in 2008 (3) SCC 44, learned counsel for the retired employees submitted that the said decision of the Central Government is prior to the judgment of the Hon'ble Supreme Court. On the contra contentions, we are not inclined to delve into the said issue.

4. Considering the fact that orders have been passed in the writ petitions and of the fact that a sum of Rs.59.37 Crores is payable by the Transport Corporations towards interest, at the rate of 6% per annum and also considering the fact that, any further delay in payment, would further mulct the Transport Corporations with interest, we order the Transport Corporations to pay a sum of Rs.59.37 Crores, to those who have already filed writ petitions, on or before 29.06.2018, with interest, up to the date of payment.

5. Insofar as payment of interest to others who have not filed writ petitions, Transport Corporations is

directed to revert with the schedule of payment. Transport Corporations are also directed to explore the modality of earmarking a separate component, towards payment of arrears and interest, in the fare.

Post the matter on 29.06.2018.

3. On this day, when the matter came up for further hearing, Mr.V.Ajoy Khose and Mr.A.Rajendran, learned counsel for the retired employees, reiterated that, interest on belated payment of surrender leave salary, has not been paid. In this regard, Mr.V.Ajay Khose, learned counsel, relied on the judgment of a Division Bench of this court in ***Government of Tamil Nadu v. M.Deivasigamani*** reported in (2009) 3 MLJ 1.

4. However, placing reliance on Office Memorandum No.38/64/98-P&PW(F) dated 05.10.1999 issued by the Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioners' Welfare, Ms.Rajani Ramados, learned counsel for the Transport Corporation, submitted that interest on belated payment of Surrender Leave Salary, is not permissible and therefore, retired employees of the Transport Corporation are not entitled to interest on belated payment of surrender leave salary and in

the above said circumstances, interest has not been computed.

5. By way of reply, Mr.A.Rajendran, learned counsel for the retired employees submitted that there are eight transport corporations. Referring to an information dated 18.06.2018 furnished by the Tamil Nadu State Transport Corporation (Kumbakonam) Limited, Kumbakonam, addressed to one Mr.M.Bose, Mr.A.Rajendran, learned counsel for the retired employees, submitted that, retired employees of Tamil Nadu State Transport Corporation (Kumbakonam) Limited, Kumbakonam were paid interest on the belated payment of surrender leave salary. According to him, 695 employees of the Transport Corporation (Kumbakonam) Division, were given interest on belated payment of surrender leave salary, but the Managing Directors of the other Transport Corporations, have denied payment of interest.

6. Though, on 28.04.2018, we did not delve into the aspect of payment of interest on leave salary, considering the fact that contempt applications are still pending before the Writ Court on this issue, and when rival contentions are made in this appeal, we answer the same.

7. On the aspect as to whether employer/Government is bound to

pay interest on belated payment of surrender leave salary, Mr.Vijay Narayan, learned Advocate General, fairly submitted that there are decisions of the courts holding that interest is payable. Submission of the learned Advocate General is placed on record.

8. Though Ms.Rajani Ramadoss, learned counsel for Managing Director, Tamil Nadu State Transport Corporation (Salem) Ltd, Salem, vehemently contended that there is no need to pay interest on the belated payment of surrender leave salary, we wish to state that arguments of the learned counsel is not in conformity with the submission of the learned Advocate General. Further, perusal of the Memorandum of grounds of appeal shows that absolutely no ground has been raised in this regard. Neither the supporting affidavit filed in C.M.P. No.6352 of 2018 for stay of part of the order dated 02.02.2017 made in W.P. No.13667/2016, nor the Memorandum of Grounds, indicate that the Managing Director, Tamil Nadu State Transport Corporation (Salem) Ltd, Salem/appellant, has raised an issue relating to interest on the belated payment of the surrender leave salary. It is well settled that oral submissions are not permissible in the absence of any pleadings/grounds raised, and that too, at the appellate stage.

S.K.Dua vs. State of Haryana reported in 2008 (3) SCC 44, and in the absence of any pleading/memorandum of grounds and taking note of the submissions of the learned Advocate General, State of Tamil Nadu, it is not open to the Managing Director, Tamil Nadu State Transport Corporation (Salem) Ltd, Salem/appellant herein, to raise a ground that the Corporations are not bound to pay interest, on the belated payment of surrender leave salary.

10. At this juncture, it is also to be noticed that, no proceeding issued by the State Government, was placed before this Court adopting the Office Memorandum of the Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioners' Welfare, Government of India, dated 05.10.1999. No proceeding has been placed before this Court as to whether the Board of Directors of any of the Corporations, has adopted the above said Office Memorandum. In the absence of legal requirement, mere arguments without any foundation of facts/grounds cannot be accepted, at the appellate stage. For the abovesaid reason, Office Memorandum stated supra, cannot be applied to the case on hand. Hence, we reject the arguments of the Transport Corporation/appellant.

clear that disbursement of the balance interest portion of Rs.394.69 Crores should be made to the contempt petitioners on or before 14.04.2018 and further observed that extension of time will not be granted, having regard to the financial constraint expressed, we extended the time till 29.06.2018, on which date, it was submitted that out of Rs.59.57 Crores directed to be paid, a sum of Rs.52.16 Crores, towards interest on retirement benefits, namely, Provident Fund, Commutation, etc. has been paid by seven transport corporations. Tamil Nadu State Transport Corporation (Coimbatore) Ltd, Coimbatore alone did not pay a sum of Rs.6.71 Crores towards interest. Therefore we ordered the matter to be listed today.

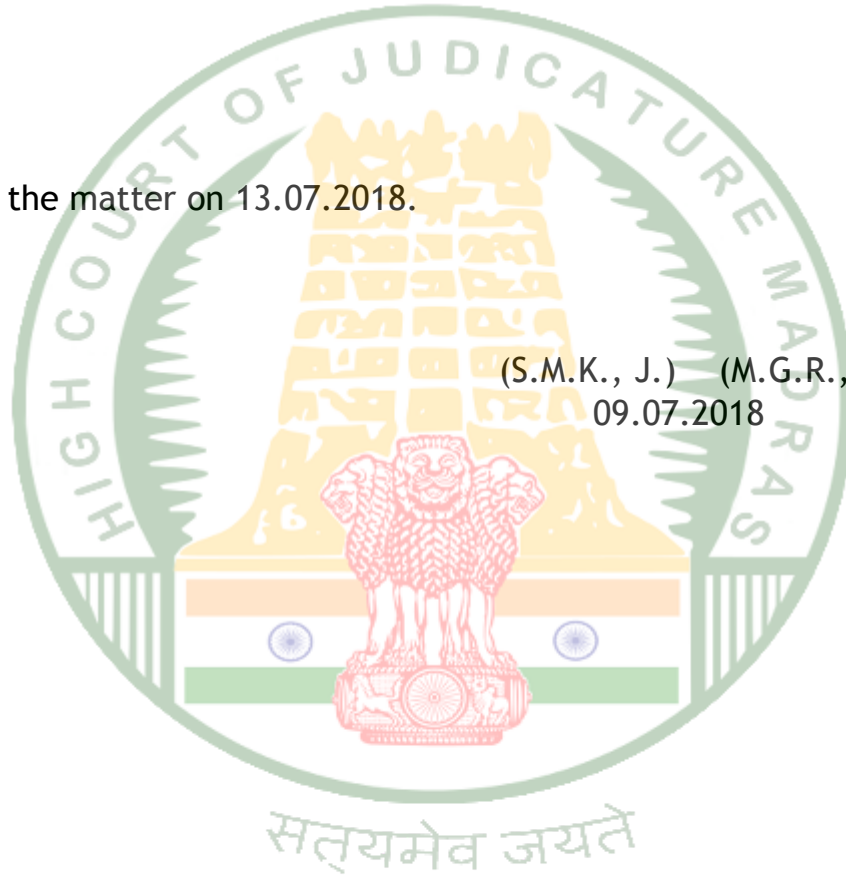
12. Today on instructions, Mr.T.N.Rajagopalan, learned Government Pleader, submitted that, a sum of Rs.6.71 Crores has been paid on 06.07.2018. Directions of this court dated 28.04.2018, to submit a payment schedule, on or before 29.06.2018, has not been complied with. Though, on instructions from Mr.K.T.Govindarajan, Law officer, present in court, Mr.T.N.Rajagopalan, learned Government Pleader, submitted that four months time, be granted for payment of the remaining interest portion of Rs.142.30 Crores, on installment basis, it is the submission of Mr.Vijay Narayan, learned Advocate General, that he would revert, after

getting suitable instructions. Disbursement of the amount of interest is delayed, despite orders of this court. Taking note of the number of employees retiring every month, the matter requires consideration by the Transport Corporation. Several thousand employees are yet to be paid interest.

Post the matter on 13.07.2018.

(S.M.K., J.) (M.G.R., J.)
09.07.2018

dm/asr



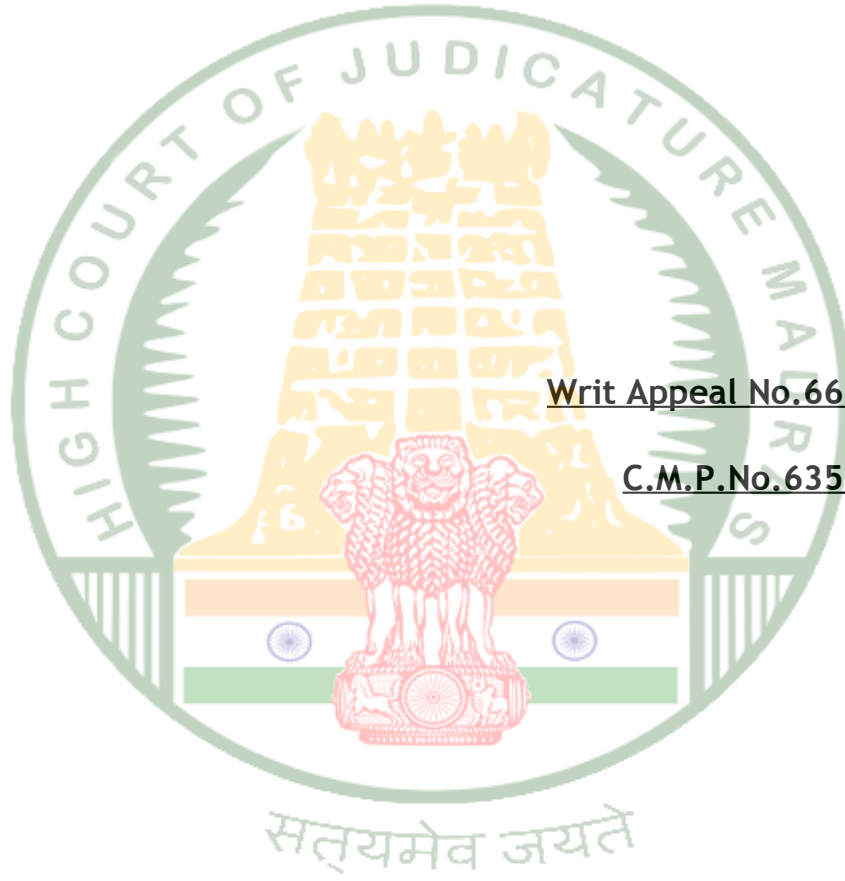
WEB COPY

S.MANIKUMAR, J.

AND

M.GOVINDARAJ, J.

dm/asr



Writ Appeal No.665 of 2018
and
C.M.P.No.6352 of 2018

WEB COPY

09.07.2018