



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved On : 18.11.2016

Orders Pronounced on : 02.12.2016

CORAM :

THE HON'BLE DR.JUSTICE S.VIMALA

WEB COPY W.P.(MD) Nos.2323, 18731, 18732, 18736, 20830, 20831,
20836, 20003, 20004, 21517 of 2016
& 22882 of 2016
& WMP (MD) No.2046 of 2016

1. S.Venugopal
2. C.Sundaram
3. P.Marimuthu
4. C.Varadharajan
5. K.Sekar
6. G.Susai Regis
7. P.Muthukrishnan
8. K.Ravi
9. A.Rajendran
10. D.Subbaraj
11. G.Krishnamoorthy
12. S.Krishnamoorthy
13. P.Sankaran
14. P.Sundararaju
15. M.Chandran
16. A.Vajjiravelu
17. P.Thulasi Ayyah
18. B.Baskaran
19. N.Thiagarajan
20. G.Pazhamalai
21. G.Gangadharan
22. A.Venkatachalam
23. SP.Nagarajan ... Petitioners in W.P.(MD) No.2323 / 2016
24. N.Pasupathy ... Petitioner in W.P.(MD) No.18731 / 2016
25. A.K.Thangavelu ... Petitioner in W.P.(MD) No.18732 / 2016
26. K.Asokan ... Petitioner in W.P.(MD) No.18736 / 2016
27. V.Nagappan ... Petitioner in W.P.(MD) No.20830 / 2016
28. V.Rengasamy ... Petitioner in W.P.(MD) No.20831 / 2016
29. P.P.V.Velayudham ... Petitioner in W.P.(MD) No.20836 / 2016
30. R.Sarangan ... Petitioner in W.P.(MD) No.20003 / 2016
31. N.Maruthan ... Petitioner in W.P.(MD) No.20004 / 2016
31. D.Alfred Thinakaran
32. K.V.Karunanithy
33. N.Rajendran
34. N.Arunachalam
35. A.S.Janakiraman
36. G.Karunanithi
37. B.Lakshmanan
38. R.Venkatasubramanian
39. AR.Arumugam ... Petitioners in W.P.(MD) No.21517/2016



40. R.Baskaran

... Petitioner in W.P.(MD) No.22882/2016

vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Transport Department and Chairman
of Board of Directors of
State Transport Undertakings,
Fort St. George,
Chennai - 9

... R-1 in W.P.(MD) No.2323 / 2016
& R-1 in W.P.(MD) No.21517/2016

2. The Secretary to Government of Tamil Nadu,
Finance (Pension) Department,
Fort St. George,
Chennai - 9.

... R-2 in W.P.(MD) No.2323 / 2016

3. The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Represented by its Managing Director,
Kumbakonam.

... R-3 in W.P.(MD) No.2323 / 2016
& R-1 in W.P.No.20831/2016
& R-1 in W.P.(MD) No.20836 / 2016
& R-1 in W.P.(MD) No.20004 / 2016
& R-2 in W.P.(MD) No.21517 / 2016
& R-1 in W.P.(MD) No.22882 / 2016

4. The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited, Kumbakonam Region,
Kumbakonam

... R-4 in W.P.(MD) No.2323 / 2016
& R-3 in W.P.(MD) No.21517 / 2016

5. The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Pudukottai Region,
Pudukottai

... R-5 in W.P.(MD) No.2323 / 2016
& R-2 in W.P.(MD) No.20831 / 2016
& R-2 in W.P.(MD) No.20836 / 2016
& R-2 in W.P.(MD) No.20004 / 2016
& R-4 in W.P.(MD) No.21517 / 2016

6. The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Karaikudi Region,
Karaikudi

... R-6 in W.P.(MD) No.2323 / 2016
& R-5 in W.P.(MD) No.21517 / 2016



7. The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Trichy Region,
Trichy

... R-7 in W.P.(MD) No.2323 / 2016
& R-6 in W.P.(MD) No.21517 / 2016

8. The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Nagapattinam Region,
Nagapattinam

... R-8 in W.P.(MD) No.2323/2016
& R-2 in W.P.(MD) No.22882/2016

9. The Administrator,
The Tamil Nadu State Transport Corporation
Pension Fund Trust, Thiruvalluvar House,
Pallavan Salai,
Chennai 600 002

... R-9 in W.P.(MD) No.2323/2016
& R-3 in W.P.(MD) No.20830/2016
& R-3 in W.P.(MD) No.20831/2016
& R-3 in W.P.(MD) No.20836 / 2016
& R-3 in W.P.(MD) No.20004 / 2016
& R-7 in W.P.(MD) No.21517 / 2016

10. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Transport Department and Chairman
of Board of Directors of
State Transport Undertakings,
Fort St. George,
Chennai - 9

... R-1 in W.P.(MD) No.18731/2016
& R-1 in W.P.(MD) No.18736/2016
& R-1 in W.P.(MD) No.20003/2016

11. The Management of
The Tamil Nadu State Transport Corporation
(Madurai) Limited,
Rep. by its Managing Director,
Bypass Road,
Madurai - 16

... R-2 in W.P.(MD) No.18731 / 2016
& R-1 in W.P.(MD) No.18732 /2016
& R-2 in W.P.(MD) No.18736 / 2016
& R-1 in W.P.(MD) No.20830 /2016



12. The General Manager,
The Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Madurai Region, Bye Pass Road,
Madurai 625 016 ... R-2 in W.P.(MD) No.18732 / 2016
13. The Financial Advisor & Chief Accounts Officer,
Tamil Nadu State Transport Corporation
(Madurai) Ltd., Bye Pass Road,
Madurai 625 016 ... R-3 in W.P.(MD) No.18736 / 2016
14. The General Manager,
The Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Virudhunagar Region,
Virudhunagar ... R-4 in W.P.(MD) No.18736 / 2016
... & R-2 in W.P.(MD) No.20830 /2016
15. The Management of
The Tamil Nadu State Transport Corporation
(Tirunelveli) Limited,
Rep. by its Managing Director,
Tirunelveli ... R-2 in W.P.(MD) No.20003 / 2016

Prayer in W.P.(MD) No.2323 of 2016:- Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned letter of the first respondent, in Letter No.31310/Fin (BPE) Dept. /2011, dated 15.02.2012, quash the same and consequently to direct the respondents 3 to 9 to extend the scheme of encashment of leave on private affairs for the period of 90 days to the petitioners and to pay monetary benefits to the petitioners based on the said scheme in terms of G.O.Ms.No.488, Finance (Pension) Department, Government of Tamil Nadu, dated 12.08.1996 and letter of the second respondent in Letter No.37568/BPE/2006, dated 28.01.2008, together with interest at the rate of 18% per annum, from the date of retirement of the petitioners to till the date on which the above monetary benefits are settled to them within the time that may be stipulated by this Court.

Prayer in W.P.(MD) Nos.18731, 18732, 18736, 20003, of 2016:- Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the respondents to extend the benefit of surrender and encashment of unearned leave on private affairs for the period of 90 days to the petitioner and to pay monetary benefits to the petitioner with interest at the rate of 18% per annum payable, from the date of retirement of the petitioner to till the date of payment of the said monetary benefit based on the scheme of unearned leave on



private affairs in accordance with G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996 and Government Letter No.37568/BPE/2006, dated 28.01.2008 and Board Resolution of the second respondent company bearing Resolution No.8, dated 25.03.2010.

WEB COPY

Prayer in W.P. (MD) Nos.20830, 20831, 20836, 20004, 21517 & 22882 of 2016:- Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the respondents to extend the benefit of encashment of unearned leave on private affairs for the period of 90 days to the petitioner and to pay monetary benefits accrued thereon together with interest at the rate of 18% per annum payable, from the date of retirement of the petitioner to till the date of payment of the above monetary benefits are settled within the time that may be stipulated by this Court.

For Petitioners in all W.Ps. : Mr. A.Rahul

For Respondents in all W.Ps. : Mr. T.S.Mohamed Mohideen, AGP.,
Mr. D.Sivaraman,
Mr. K.Sathiya Singh,
Mr. A.Jeyaram &
Mr. A.P.Muthu Pandian

C O M M O N O R D E R

In W.P.No.2323 of 2016, the petitioner seeks for the issuance of a Writ of Certiorarified Mandamus, to quash the letter of the first respondent, dated 15.02.2012, by which, the scheme of encashment of unearned leave on private affairs at the time of retirement was directed **not to be extended to** Statutory Bodies / State Public Sector Undertakings, whose service regulations / service rules do not contain provision for availing of unearned leave on private affairs. Consequential direction has been sought for against respondents 3 to 9 to extend the scheme of encashment of leave on private affairs for a period of 90 days to the petitioners and to pay monetary benefits based on the said scheme in terms of G.O.Ms.No.488, Finance (Pension) Department, Government of Tamil Nadu.

1.1. In the remaining writ petitions, the relief sought for is, writs of mandamus, seeking direction to respondents 1 and 2 / The State of Tamil Nadu and The Management of the Transport Nadu State Transport Corporation (Madurai) Ltd., to extend the benefit of encashment of leave on private affairs, for a period of 90 days.

2. The petitioners are the retired Managerial / Supervisory cadre officers of the Tamil Nadu State Transport Corporation Limited. The common grievance of the petitioners is that they are



not allowed to encash unearned leave on private affairs for a period of 90 days at the time of retirement.

3. At the time of retirement, the employees are entitled to encash the entire earned leave, subject to maximum of 240 days at their credit. The leave salary for the period of the earned leave, up to 180 days, comprises of Dearness Allowance, House Rent Allowance, City Compensatory Allowance, etc., as admissible under the Rules and for the period of unearned leave exceeding 180 days, the leave salary comprises of Pay and Dearness Allowance only. The employees were making long pending demand for surrender of half-pay leave on private affairs at the time of retirement and also to grant full leave salary for encashment of entire earned leave at the credit of the retiring employees.

3.1. While considering the request of the employees, the Government of Tamil Nadu extended the scheme of encashment of unearned leave on private affairs for a period of 90 days, to the Government Servants of the State of Tamil Nadu.

3.2. By the letter, dated 28.01.2008, issued by the second respondent / Secretary to Government, Finance Department, the above scheme was extended to Transport Corporation Employees, especially to those who are in the supervisory, administrative and managerial cadres.

3.3. The Transport Corporation placed the above subject before the Board of Directors of the Corporation on 24.03.2010, whereunder a Resolution was passed deciding to adhere to the above Government Order and the scheme.

3.4. Even though the Board of the Transport Corporation decided to extend the benefit of G.O.Ms.No.488, dated 12.08.1996, to Transport Corporation employees, it did not implement the said scheme, citing the impugned circular, dated 15.02.2012, under which, the Government made it clear that only if the service rules of the concerned Public Sector Undertakings provide for extending the above scheme, the concerned Undertakings can allow the individual employees to avail those monetary benefits. Aggrieved over the action of the Management of the Transport corporation, **challenging the impugned circular of the Government dated 15.02.2012**, W.P.No.2323 of 2016 has been filed.

4. The specific issue raised in these writ petitions is that, just because there are no service Rules providing for the benefit of surrender of unearned leave on private affairs, whether the management can refuse the benefit, based on the impugned circular, dated 15.02.2012.

5. It is the claim of the petitioners that the employees of Tamil Nadu Tea Plantations Limited, which is also a Public Sector Undertaking, owned by the Government of Tamil Nadu, for whom the benefit of the Government Order has been extended and therefore, the petitioners herein cannot be denied the benefit of the



surrender of unearned leave on private affairs.

6. This issue is the subject matter of decision in Writ Petition No.7423 of 2014 before the Principal Seat of this Court. The Principal Seat of this Court, while allowing the writ petition, on 20.03.2015, has held that the benefit of the G.O.Ms.No.488, dated 12.08.1996, cannot be denied to the petitioners, just because the Service Rules of the establishment have not been amended. The matter was taken in an appeal and the Division bench of this Court, in Writ Appeal No.1352 of 2015, etc., batch case, dated 29.06.2016, (The Government of Tamil Nadu v. P.Gurusami) dismissed the writ appeal, affirming the order passed in the writ petition, and the relevant observation reads as under:-

"17. In the circumstances, just because there is no provision in the Service Rules of the 2nd appellant-Board to grant unearned leave on private affairs and that the Government had not taken any policy decision yet in the matter in view of the financial burden and the Board is running in loss and the very same provision not included in the Standing Order or bye-law of the 2nd appellant-Board, it does not necessarily mean that the claim of the employees for such benefit has to be rejected outrightly.

18 The rejection of the claim of the employees solely based on the point of the Board running in loss on the ground that some Government Entities running in profit only could grant the benefits stated in G.O.Ms.No.488 dated 12.08.1996 and the other Corporations / Boards, which is running in loss cannot be extended with the said benefit cannot be sustained at all since the said decision is nothing but causing a discrimination among the employees, which will create a lack of motivation among the employees which would result in the employees not thriving to make it as a Profit running Board, particularly, when the undertaking is in loss. Further, in our considered view, the **extension of benefit of G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996, would be a motivating factor for running the Undertaking in Profit** and as such, the appellants herein shall take earnest steps to extend the benefit of encashment of 50% of the unearned leave on private affairs, standing on the credit of the employees and incorporate the same in the Rules / Bye-Laws of the Board. Even otherwise, in the present context, pursuant to the G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996, since the Government had already incorporated such a provision, it is an admitted position that such a provision is prevailing. The above said G.O., enures to the benefit of employees of Government and as such, the said G.O., cannot be denied in respect of the 1st



respondent(s) in the Present Writ Appeals, just because, they are working in 2nd appellant-Board."

7. From the above judgment of the Division Bench of this Court, it is clear that G.O.Ms.No.488, dated 12.08.1996, would be applicable to the petitioners herein also, because they are deemed to be the beneficiaries under G.O.Ms.No.488, as the Transport Corporation also is a Public Sector Undertaking. As the Government Order enures for the benefit of the employees of the Government and as such the benefit of said Government Order cannot be denied in respect of the petitioners, just because they are working in the Corporation.

8. In the result:-

(i) the impugned letter of the first respondent, dated 15.02.2012, which is challenged in W.P.(MD) No.2323 of 2016 is set-aside;

(ii) Writ Petitions in W.P.(MD)Nos. 18731, 18732, 18736, 20830, 20831, 20836, 20003, 20004, 21517 of 2016 and 22882 of 2016 stand disposed of, directing the respondents in all the writ petitions to extend the benefit of surrender and encashment of unearned leave on private affairs for the period of 90 days to the petitioners and to pay monetary benefits to the petitioners based on the said scheme in terms of G.O.Ms.No.488, Finance (Pension) Department, Government of Tamil Nadu, dated 12.08.1996 and letter of the second respondent in Letter No.37568/BPE/2006, dated 28.01.2008, together with interest at the rate of 6% per annum, from the date of retirement of the petitioners to till the date on which the above monetary benefits are settled to them, by taking into account, the observations made in this order as well as in the judgment of the Division Bench, referred to supra, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) No costs. Consequently, the connected WMP is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Transport Department and Chairman of Board of Directors of
State Transport Undertakings,
Fort St. George,
Chennai - 9.



2. The Secretary to Government of Tamil Nadu,
Finance (Pension) Department,
Fort St. George,
Chennai - 9.

3. The Managing Director,
The Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Kumbakonam.

4. The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited, Kumbakonam Region,
Kumbakonam.

5. The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Pudukottai Region,
Pudukottai.

6. The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Karaikudi Region,
Karaikudi.

7. The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Trichy Region,
Trichy.

8. The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Nagapattinam Region,
Nagapattinam.

9. The Administrator,
The Tamil Nadu State Transport Corporation
Pension Fund Trust, Thiruvalluvar House,
Pallavan Salai,
Chennai 600 002.

10. The Principal Secretary to Government,
State of Tamil Nadu,
Transport Department and Chairman
of Board of Directors of State Transport Undertakings,
Fort St. George,
Chennai - 9.



11. The Managing Director,
The Management of Tamil Nadu State Transport Corporation
(Madurai) Limited,
Byepass Road,
Madurai - 16.
12. The General Manager,
The Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Madurai Region, Bye Pass Road,
Madurai 625 016.
13. The Financial Advisor & Chief Accounts Officer,
Tamil Nadu State Transport Corporation
(Madurai) Ltd., Bye Pass Road,
Madurai 625 016.
14. The General Manager,
The Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Virudhunagar Region,
Virudhunagar.
15. The Managing Director,
The Management of The Tamil Nadu State Transport Corporation
(Tirunelveli) Limited,
Tirunelveli.

+8cc to M/s.A.RAHUL Advocate in SR.

No.79403,79405,74767,79406,79408 to 79411

+6cc to M/s. D.SIVARAMAN Advocate in SR. No.79319 to 79324

+2cc to M/s. A.K.THANGA VELU Advocate in SR. No.79383,79385

SRK

JS/SV/MMS/4/04/2017/10P -32C

Pre-Delivery Order in
W.P. (MD) Nos.2323, 18731, 18732, 18736,
20830, 20831, 20836, 20003, 20004 &
21517 of 2016 & 22882/2016
& WMP (MD) No.2046 of 2016
02.12.2016