

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.No.46874 of 2006

P.Ranganathan

... Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Salem.

2.Tamil Nadu State Transport
Corporation (Salem Division) Limited,
12, Ramakrishna Salai,
rep. by its General Manager,
Salem-626 007.Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to C.P.No.217 of 1999 and quash the order dated 06.03.2003 passed by the first respondent dismissing the same and further direct the second respondent herein to pay the petitioner herein the wages due to him for the period from 17.06.1997 to 18.12.1998 as claimed in C.P.No.217 of 1999.

For Petitioner : Mr.K.V.Shanmuganathan

For Respondents

For R2 : Mrs.R.Rajeni Ramadoss

ORDER

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus to call for the records pertaining to C.P.No.217 of 1999 and quash the order dated 06.03.2003 passed by the first respondent dismissing the same and further direct the second respondent herein to pay the petitioner herein the wages due to him for the period from 17.06.1997 to 18.12.1998 as claimed in C.P.No.217 of 1999.

2. The short facts which are required to be noticed for the disposal of this writ petition are as follows:-

The petitioner joined service as Conductor at the second respondents Corporation some time in the year 1980. While he was working as such, he met with an accident in the year 1996, with the result, he had taken medical leave for treatment from 18.12.1996 to 21.07.1998.

3. It is to be noted that, there had been a Settlement, under Section 12(3) of the Industrial Disputes Act, 1947, entered into between the employees like the petitioner and the Management. According to the said 12(3) Settlement, out of the injuries sustained because of the accident, if an employee taken medical leave, the first six months medical leave would be sanctioned with full salary. Beyond the six months, next 18 months, such leave would be sanctioned only with the half salary.

4. In this context, it is the claim of the petitioner that from 17.12.1996 to 16.06.1997 i.e., for the first six months period, he was eligible to take leave with full salary, which had already been sanctioned and the full salary also received by the petitioner. The dispute arises with regard to the next 11 months period i.e., from 17.06.1997 to 21.07.1998, when the petitioner had taken the medical leave for the fracture, which he sustained out of the accident, the management only sanctioned the leave for the 11 months period without any salary. This leave sanctioned without the half salary, is directly against the terms of 12(3) Settlement reached between the parties and therefore, in order to get the said half salary for the 11 months period i.e., from 17.06.1997 to 21.07.1998, the petitioner has filed a Computation Petition in C.P.No.217 of 1999, on the file of the first respondent the Labour Court. The Labour Court after having considered the claim and counter claim has passed an award denying the said computation of half salary for the leave period of 11 months between 17.06.1997 to 21.07.1998. Assailing the same, the present writ petition has been filed.

5. I have heard Mr.K.V.Shanmuganathan, learned counsel appearing for the petitioner and Mrs.S.Rajeni Ramadoss, learned Standing Counsel appearing for the second respondent.

6. In fact, the learned Standing Counsel appearing for the second respondent has vehemently contended that for the first six months period leave was sanctioned with full salary. With regard to the next period, he had not claimed leave with half salary for the total 18 months next followed. In this regard, the learned Standing Counsel would submit that the terms of 12(3) Settlement has already been taken note off and accordingly, the Management passed an order denying the half salary for the said period from 17.06.1997 to 21.07.1998, by merely sanctioning the leave. Unless the said order is challenged and set aside, the petitioner cannot seek for any

benefit, much less the salary benefit, by way of Computation Petition.

7. The learned Standing Counsel would further submit that, the very entitlement of the petitioner to get half salary for the next 11 months period from June 1997 to July 1998 itself is questioned, the said issue should have been raised for adjudication and only after adjudicating the same, the petitioner would be entitled for the same. He could not have been in a position to get an award when the petitioner straightly approached the Labour Court by filing Computation Petition and the same was rightly rejected through impugned order and therefore, it does not require any interference from this Court.

8. I have considered the said rival submission made by the learned counsel appearing for the petitioner as well as the learned Standing counsel appearing for the second respondent and perused the materials placed before this Court.

9. The Labour Court in fact, extracted the import of the terms under Section 12(3) Settlement between the parties which is extracted hereunder for easy reference :-

"2.....1999ம் ஆண்டு போக்குவரத்து கழகத்திற்கும் பணியாளர் சங்கத்திற்கும் இடையே 12(3) ஒப்பந்தம் ஏற்பட்டது. அதில் காய விடுப்பு, குறித்து விதிமுறைகள் வகுக்கப்பட்டுள்ளன. பணியில் இருக்கும்போது விபத்து காரணமான காயம் ஏற்பட்டு சிகிச்சை பெற்று வந்ததால் முதல் 6 மாதங்களுக்கு முழு சம்பளத்துடன் சிறப்பு, விடுப்பு,ம், அடுத்த 18 மாதங்களுக்கு அரை சம்பளத்துடன் சிறப்பு, விடுப்பு,ம் வழங்கப்படும் என்று தெரிவிக்கப்பட்டுள்ளது....."

10. When the 12(3) Settlement reached between the parties, it binds both the employer and the employee. As per the terms of the Settlement, for any injury, if leave has taken by the employee, for the first six months period, the employee shall be entitled to claim full salary. Thereafter, still the medical leave is required for the full recovery of the injured to join duty, for the next 18 months period, the employee would be eligible to get half salary with medical leave. When these are the import of 12(3) Settlement between the parties, the petitioner is entitled to get half salary for the next 11 months period, following the first six months period, and it is recognized and settled right for which, no adjudication is required.

11. Here in the case in hand, the petitioner had been on the medical leave from 19.12.1996 till 21.07.1998. Out of these 17 months, for the first six months i.e., from 19.12.1996 to 16.06.1997, it is an admitted case that the Management has sanctioned the medical leave with full salary. For the subsequent 11 months period, which comes under the next 18 months period i.e., from 17.06.1997 to 21.07.1998, leave alone sanctioned by the Management without any salary. The denial of half salary to the petitioner for the said 11 months period comes under the next 18 months, following the

first six months period is undoubtedly against the Clauses mentioned in 12(3) Settlement between the parties. Merely because the Management has taken a view to deny the half salary to the petitioner for the 11 months period and passed an order sanctioning leave without any salary, that order need not be challenged separately, as the Computation Petition filed by the petitioner before the Labour Court would take care of the same, as the entitlement of the half salary of the petitioner for the said period, has already been decided or settled and thereafter, the same need not be once again adjudicated. Even though, these aspects have been noted by the Labour Court in the impugned order, however, the Labour Court has refused to accept the plea of the petitioner for sanctioning of half salary for the 11 months period and ultimately, rejected the claim of the petitioner. The said order passed by the Labour Court, which is impugned herein, no doubt, is against the terms of 12(3) Settlement between the parties, as accrued right cannot be denied by merely passing of the order by the Management, as the Management also is the party to the 12(3) Settlement.

12. In that view of the matter, I have no hesitation to hold that the petitioner is entitled to get half salary for the said 11 months period i.e., from 17.06.1997 to 21.07.1998. Accordingly, the rejection order made by the Labour Court in the Computation Petition filed by the petitioner is unjust and liable to be interfered.

13. In the result, this Writ Petition is allowed and the second respondent is directed to pay half salary to the petitioner, for the 11 months period i.e., from 17.06.1997 to 21.07.1998 and such payment shall be made within a period of eight weeks from the date of the receipt of a copy of this Order. It is made clear that except for the said period, i.e., 17.06.1997 to 21.07.1998, the petitioner shall not be entitled to claim any salary beyond that period.

14. With these directions, this Writ Petition is ordered accordingly. No costs.

Sd/--
Assistant Registrar(co)

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Sub Assistant Registrar

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To

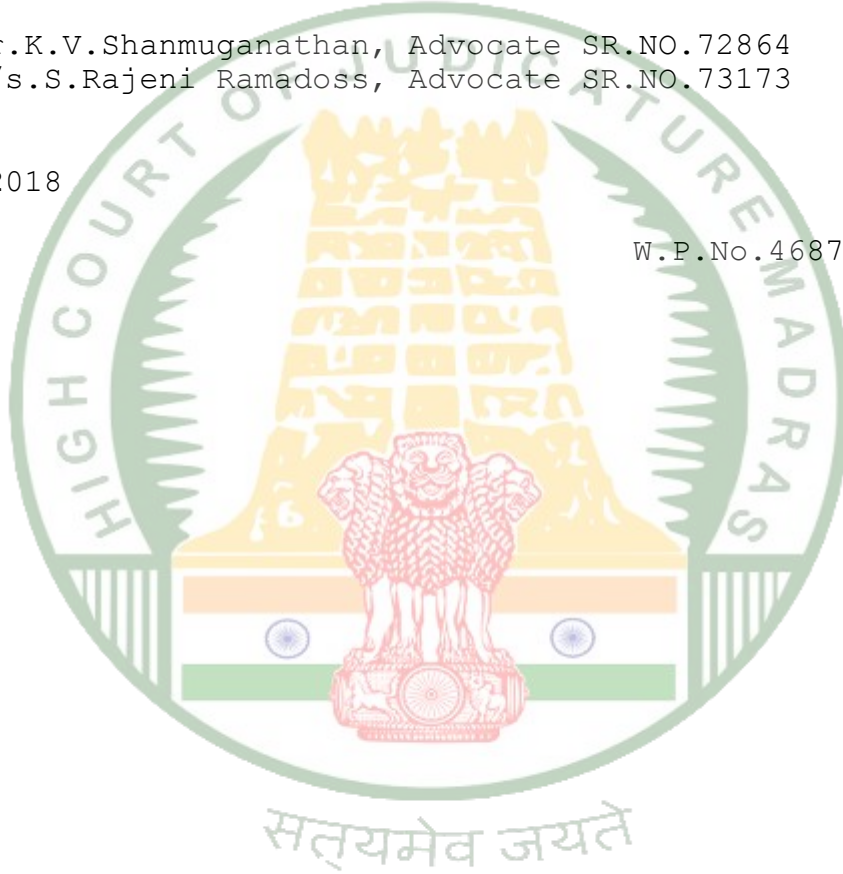
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(Salem Division) Limited,
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Salem-626 007.

+1cc to Mr.K.V.Shanmuganathan, Advocate SR.NO.72864

+1cc to M/s.S.Rajeni Ramadoss, Advocate SR.NO.73173

NM(CO)
sm:19.11.2018

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