BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.10.2018
CORAM:
THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

W.P.(MD)No.1998 of 2018

M.Sekar ... Petitioner

Vs.

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

2.The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam Limited,
27, New Railway Station Road,
Kumbakonam-612 001.

3.The General Manager,
Tamil Nadu State Transport Corporation,
Kumbakonam Limited, Kumbakonam Region,
Kumbakonam-612 001.

4.The Administrator,
Tamilnadu State Transport Corporation,
Employees Pension Fund Trust,
Thiruvalluvar Illam, Pallavansalai,
Chennai-600 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to settle the petitioner's earned leave Salary of Rs.1,10,692/- for 75 days in respect of the years 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015 and also interest of delayed payment of Provident fund Rs.35,676/- from 01.07.2015 to 15.03.2016 resulting a total sum of Rs.1,46,368/- together with interest at the rate of 18% per annum payable from the date of retirement to till the date of actual payment.

For Petitioner	:	Mr.S.Royce Immanuel
For R1	:	Mr.M.Pandiarajan Additional Government Pleader
For R2&R3	:	Mr.D.Sivaraman
For R4	:	Mr.AP.Muthupandian

ORDER

This writ petition has been filed by the writ petitioner for the issuance of a writ of mandamus directing the respondents to settle the petitioner's earned leave Salary of Rs.1,10,692/- for 75 days, in respect of the years 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015 and also interest of delayed payment of Provident fund Rs.35,676/- from 01.07.2015 to 15.03.2016, resulting a total sum of Rs.1,46,368/- together with interest at the rate of 18% per annum payable from the date of retirement to till the date of actual payment.

2.The sum and substance of the issue on hand is that the petitioner has been granted leave salary periodically, which was affirmed by circular, dated 09.01.2017. Citing financial crisis, yet another circular dated 22.03.2018 was issued cancelling the circular mentioned supra. Even though the petitioner was a workman under Section 2(s) of the Industrial Disputes Act 1947, the leave en-cashment to the employees are extended by means of Settlement entered under Section 12(3) of Industrial Disputes Act, dated 13.02.1999. In terms of the settlement, a regular employee is entitled to surrender the accumulated leave to his credit, at the time of retirement to the maximum of 240 days, which is encashable. The Government has also issued a G.O.No.163, dated 21.05.1999, wherein, it has been categorically mentioned that the permanent employees, who are under regular service would be entitled to earned leave at the rate of 2 ½ days for a completed calender month of service and that the employee could accumulate his Earned Leave upto 240 days. It is also submitted that the employee can surrender his Earned Leave, which is permissible while on duty, for which, surrender of Earned Leave not exceeding 30 days in case the interval period shall be 24 months and in case of the interval of 12 months surrender will be restricted to 15 days. The petitioner would contend that the employees can surrender the leave in terms of the Settlement under Section 12(3) of the ID Act without any limit and that they would be entitled to 18 days leave every year. Benefits that has been accrued to them has been withdrawn without any notice to them and that the circular impugned in the writ petition is illegal and has got to be interfered with.

3.The sum and substance of the case of the respondent is that the writ petition itself is not maintainable. The petitioner is not a serving employee when the circular was issued. The petitioner has made the claim after two years from the date of retirement. The benefits have got to be extended in terms of the settlement under 12 (3) and not based on the circular, and, that the employee is not entitled to the benefits based on the circular, and hence, the remedy by way of enforcement of the right is not available by means of filing the present writ petition.

4.It is further stated that though the petitioner is not entitled to any benefits as claimed by him, the remedy is open to him to approach the Labour Court by filing a proper petition under Section 33(C)(2) of Industrial Disputes Act or raise a dispute with regard to the extension of the benefits, if any, available to him. Admittedly, the petitioner has surrendered leave in his credit and that only through adjudication, the employee would be entitled to the benefits and that surrender leave benefits are not the salary or retirement benefit and the petitioner has no locus-standi to file the present writ petition. He further contended that the writ petition is not maintainable. Even assuming that the writ petition is maintainable, the petitioner has approached this Court after a lapse of several years. On the ground of laches, the writ petition has to be dismissed. He would further submit even coming to the conclusion that the petitioner is entitled to the benefits in terms of the decision of the Honourable Apex Court in 2007 (9) SCC 274, the petitioner would be entitled to the arrears of surrender leave only upto a period of three years and not beyond that. Hence the writ petition has to be dismissed.

5.Heard both sides.

6.It is not in dispute that the petitioner is a workman of the respondent/corporation. The petitioner had the benefit of the circular, dated 09.01.2017 and it refers to the serving employees as on 2011 to 2014. The rights have already been accrued pursuant to the settlement and the circular is only the reiteration of the settlement. By means of the impugned circular No.163, dated 21.05.1999, the rights accrued to the employees have been said to be nullified. The contention of the respondent that the surrender leave has got to be redressed only by approaching the Labour Court, cannot be accepted, as the surrender leave is based on the extension of settlement under Section 12(3) of ID Act. The benefits accrued by means of settlement cannot be taken away by means of circular. The further contention of the respondent that the writ petition is not maintainable cannot be accepted. It is no doubt true that surrender leave benefits are not the retirement benefit. But it is the wages/salary accrued to them while in service, which cannot be deprived. It is the duty cast upon the employer to pay the wages due to them on the last day or the first day of the month and in case of retirement, the salary will have to be settled within a period, in terms as provided under the Payment of wages Act 1936. Even assuming that the above Act is not applicable, the principle laid down therein is applicable to the facts of this case. It is held that the writ petition is maintainable and that what is due to the employees, is their rights as per the settlement from 1999, and the petitioner has got to be paid the surrender leave wages.

7.Though I find much force in the contention of the respondent that the petitioner has approached this Court belatedly, that alone cannot be a criteria to deprive the petitioner from getting all the accumulated salary or wages which is due to him under the head ''surrender leave wages''. But, however, for approaching the Court belatedly, the petitioner would not be entitled to any interest. The contention that in terms of the decision reported in 2007 (9) SCC 274, the petitioner would be entitled to only three years surrender salary cannot be accepted. The principle laid down in the case is with regard to pension and the writ petition has been filed directly. The benefits under settlement are an award and is a bonus surrender and it is the duty cast upon the employer to discharge liability immediately which has not been done. It is the duty cast upon the employer to disburse the eligible amount due to the employee and if there is any dispute in that payment, then this Court can relegate that the petitioner will have to agitate the remedy before the proper forum, as the documents with regard to service records are not available regarding the eligible surrender leave salary available. It is for the respondents, if the Petitioner is otherwise eligible to pay the encashment of leave salary without interest.

8.Since the petitioner is eligible to earned leave surrender salary for a period of 15 days per year or 30 days once in two years, the benefits available to the employee may be sanctioned and if he is eligible, encash the amount due to him, may be extended to him and such payment can be made in 6 equal instalments commencing from the month of December 2018 and each instalment shall be paid within 10th day of every English Calendar month.

9.Accordingly, this writ petition stands disposed of directing the authorities concerned to encash the surrender leave in his credit, in terms of settlement under Section under Section 12(3) of the Industrial Disputes Act, 1947 and the benefit of 15 days or 30 days surrender leave salary, as the case may be, needs to be extended to him, if there are no legal impediments to do so. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The Secretary to Government,
The State of Tamilnadu,
Transport Department and Chairman of Board of
Directors of State Transport Undertakings,
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Employees Pension Fund Trust,
Thiruvalluvar Illam, Pallavansalai,
Chennai-600 002.

+1CC to Mr.D.Sivaraman, Advocate, SR.No.88740
+1CC to Mr.S.Royce Immanuel, Advocate, SR.No.88575
+1CC to the Special Government Pleader SR.No. 88822

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NS
ES/SKN/RSK/SAR 1/12.12.2018/5P/8C