BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.04.2018

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD) No.2449 of 2018

D.Soundararajan ... Petitioner

-vs-

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

2. The General Manager, The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., Pudukottai Region,Pudukottai .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Ref. No.TNSTC/Pudhu/Sathu/S.M./156/17 Pudukottai Region, dated 21.12.2017 quash the same and consequently direct the respondents to settle the petitioner's surrender leave salary for 84.5 days of Rs.1,37,983/- from 2009-2016 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.A.Rahul

For Respondents: Mr.D.Sivaraman

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O R D E R

This writ petition has been filed challenging the impugned order dated 21.12.2017 in Ref.No.TNSTC/Pudhu/Sathu/S.M./156/17 Pudukottai Region and for a consequential direction to the respondents to settle the petitioner's surrender leave salary for 84.5 days of Rs.1,37,983/- from 2009-2016 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 case of the petitioner is that he joined in the respondent Corporation as Conductor with effect from 01.03.1980 and retired from service with effect from 31.05.2016, after rendering 36 years of service. However, his surrender leave salary was not settled by the respondents. Hence, he filed a writ petition in W.P.(MD) No.14498/2017 seeking direction to the respondents to settle the petitioner's surrender leave salary for 84.5 days of Rs.1,37,983/- from 2009 to 2016 together with interest at the rate of 18% per annum payable from the date of retirement till the date of actual payment.

3. It is the further case of the petitioner that by order dated 16.08.2017, the said writ petition was disposed of by directing the respondent Corporation to consider the petitioner's representation for grant of earned leave salary for a period of 15 days per year from 2009-2016, within a period of six weeks from the date of receipt of a copy of the order. However, the respondent rejected the request of the petitioner by passing the impugned order dated 21.12.2017. Aggrieved by the said order, the petitioner is before this Court with this writ petition.

4. Heard Mr.A.Rahul, learned counsel for the petitioner and Mr.D.Sivaraman, learned standing counsel for the respondent Corporation.

5. The learned counsel for the petitioner submits that in the impugned order, the respondent Corporation has merely stated that the petitioner, during his service did not surrender the earned leave and only those who surrender the earned leave then and there during the service alone would be considered for reimbursement and since the said surrender has not been made by the petitioner and he has made the claim now only after his retirement, such request could not be considered. In this regard, the learned counsel would state that though the petitioner superannuated on 31.05.2016, from the year 2011 onwards, the said practice of surrendering 15 days or 50% of the earned leave per year was done away by the respondent Corporation by citing the reason of financial crisis.

6. The learned counsel would also rely upon 12(3) settlement reached between the employees and the respondent Corporation, according to which, in respect of earned leave, 15 days per year permitted to be surrendered or 30 days once in two years are permitted to surrender. Since the said option was not open to the petitioner, because of the action on the part of the respondent Corporation citing the financial crisis, the blame cannot be put against the petitioner now by the respondent Corporation, as has been stated in the impugned order.

7. In support of the said contention, the learned counsel relied upon the RTI information dated 31.03.2017 issued by the respondent Corporation, where it has been specifically answered to

the query raised by the petitioner that the earned leave surrender was stopped from February 2011 onwards. When it was asked for the reason for such stopping or done away of the earned leave surrender, the respondent Corporation replied stating that because of the financial crisis faced by the Corporation.

8. The learned counsel for the petitioner in support of his case also relied upon a case, where, in similar circumstances, this Court passed an order in W.P.(MD) No.24245/2016 etc. batch, dated 20.12.2016, in the matter of A.Sundararajan v. Tamil Nadu State Transport Corporation, Kumbakonam Limited and another.

9. I have also heard the learned counsel for the respondent Corporation. He would submit that even though as per 12(3) settlement, the employee was entitled to surrender 15 days in one year or 30 days in two years for surrendering and encashing, the same has not yet been done by the petitioner during his service during the year 2011-2014. On superannuation, the petitioner retired in the year 2016 and only thereafter, now, he has made a claim of surrender of earned leave based on the circular issued by the respondent Corporation dated 09.01.2017. The learned counsel for the Corporation would further submit that the said circular is not meant for enabling the retired employees to renew their claim of surrendering their earned leave of 15 days in a year during the service ie., between 2011-14 and it is applicable only for the existing employees. Therefore, on the basis of the said circular, dated 09.01.2017, such a benefit cannot be extended to the petitioner and therefore, the writ petition deserves to be dismissed.

10. I have considered the said rival submissions made by both sides.

11. It is not in dispute that there was 12(3) settlement between the parties. According to such settlement, employees would be entitled to surrender earned leave of 15 days in one year or 30 days in two years and the remaining 15 days or 30 days, as the case may be, shall be cumulatively accumulated as terminal earned leave benefit to the maximum of 240 days for the whole service.

12. As far as the petitioner's case is concerned, during his service, between 2011 and 2014, though he could have surrendered the earned leave of 15 days in a year as per 12(3) settlement, the same was not made possible because the practice was done away by the respondent Corporation, as they have admitted in the answer given to the query under RTI Act. That is the reason why the respondent Corporation in the recent circular dated 09.01.2017 has given the following option to the employee:

"பொருள்: 2011 முதல் 2014 வரையிலான ஆண்டு ஒன்றுக்கு 15 நாட்கள் ஈட்டிய விடுப்பை ஒப்படைப்பு செய்யலாம் என அனைத்து பணியாளர்களுக்கும்

தெரிவிக்கப்படுகிறது. ஒவ்வொரு ஆண்டும் 15 நாட்கள் முழுமையாக ஒப்படைப்பு செய்ய முடியும் என்றும் (15 நாட்களுக்கு குறைவாக ஈட்டிய விடுப்பு ஒப்படைப்பு செய்ய இயலாது) மற்றும் ஒப்படைப்பு செய்த 15 நாட்கள் போக மீதி அந்த ஆண்டில் 30 நாட்கள் ஈட்டிய விடுப்பு கையிருப்பில் இருக்க வேண்டும்.

மேலும் விருப்புரிமை படிவத்தை ஒவ்வொரு ஆண்டுக்கும் தனித்தனியே பூர்த்தி செய்து கிளை மேலாளர் மூலம் சமர்ப்பிக்க வேண்டும் என தெரிவிக்கப்படுகிறது."

13. If the present circular dated 09.01.2017 enabling the employees to surrender earned leave of 15 days per year for the original period between 2011 and 2014, certainly, such benefits should be extended to all such employees. Insofar as the present petitioner is concerned, the petitioner also could not surrender his earned leave between 2011 and 2014 and therefore, the petitioner would be entitled to make such a claim by virtue of the Circular. Moreover, when a similar issue has been raised, by similarly placed employees before this Court in the order cited supra in A.Sundararajan v. The Tamil Nadu State Transport corporation (Kumbakonam Limited) and another, the learned Judge, after having considered these issues, has allowed the said writ petition by making the following observations and findings, which are extracted hereunder for easy reference:

> "4.Learned standing counsel appearing for the respondents would contend that it is not in dispute that the petitioners are entitled to earned leave surrender salary and it has to be ascertained as to whether they have made any claim for disbursement of the said salary in the respective years, as there is no reference either in the affidavit as well as in the typed set of papers with regard to the forwarding of any letter/application, claiming the said amount. He has further submitted that it has to be ascertained as to whether the period for which leave salary is claimed in these writ petitions have been included in the final settlement of surrender leave salary of 240 days after their retirement. Moreover, the respondents/Corporation have been undergoing severe economical crisis, which is also one of the reasons for not releasing the amount.
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> 5.The financial crisis cannot be the ground to deprive the benefit of earned leave surrender salary to the petitioners, especially, when the claim of earned leave surrender salary for 15 days per year or 30 days once in two years has been admitted in the settlement effected under Section 12(3) of the Industrial Disputes Act, 1947.
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> 6.Therefore, the respondents are directed to consider the claim of the petitioners for payment of the earned leave surrender salary in respect of the years 2010-2014 and pay the eligible amount to the

petitioners as per the commitment made by the respondents under section 12(3) settlement within a period of eight weeks from the date of receipt of a copy of this order.”

14. Having considered the said judgment of this Court as well as the said Circular dated 09.01.2017, this Court is of the considered view that the petitioner shall also be eligible and entitled to surrender 15 days earned leave from the years 2011-2014, where the petitioner was in service and if such surrender is made, certainly, he will be entitled to claim the encashment for the said earned leave surrender.

15. In view of the above said factual and legal position, this Court has no hesitation to hold that the impugned order passed by the respondent Corporation rejecting the said claim made by the petitioner for encashment of earned leave benefit between 2011 -2014 is unsustainable. Accordingly, it is quashed.

16. In the result, the writ petition is allowed and the petitioner shall be entitled to claim the leave salary surrender encashment benefit depending upon his eligibility for the relevant years and since the petitioner has already made such a request on 24.03.2018, the same shall be accepted and the amount equivalent to surrender of earned leave shall be disbursed to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

+ 1 cc TO Mr.D.Sivaraman , Advocate in SR No. 59517
+ 1 cc TO Mr.A.Rahul , Advocate in SR No. 59571

RR
AE/SV MMS/SAR3/16.04.2018/5P/3C

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