



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **04.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)No.210 of 2019
and
C.M.P. (MD)No.1795 of 2019

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

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

... Appellants

Vs.

D.Soundararajan

..Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order dated 02.04.2018 made in W.P.(MD)No.2449 of 2018 on the file of this Court and allow this writ appeal.

Prayer in WP(MD)No. 2449/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue 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 Pudukkottai Region dated 21/12/2017, quash the same and consequently direct the respondents to settle the petitioners 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 Appellants : Mr.D.Sivaraman

For Respondent : Mr.A.Rahul



JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

We elaborately heard Mr.D.Sivaraman, learned counsel appearing for the appellants and Mr.A.Rahul, learned counsel appearing for the respondent.

2. This appeal is filed by the Tamil Nadu State Transport Corporation, Kumbakonam Division. The respondent filed W.P(MD). No.2449 of 2018 praying for a Writ of Certiorarified Mandamus to quash the order dated 21.12.2017 and direct the appellants to settle the petitioner's surrender leave salary. The appellant Corporation resisted the claim by contending that even though as per the settlement entered into under Section 12(3) of the Industrial Dispute Act, the employee is entitled for surrendering and encashing 15 days in one year or 30 days in two years, the same has not been done by the writ petitioner during his service during 2011-2014 and after superannuation only in the year 2016, he has made a claim of surrender of earn leave, based on the circular issued by the appellant Corporation, dated 09.01.2017. Further, it is submitted that the 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 i.e., between 2011-2014 and it is applicable only for existing employees. Therefore, it is submitted that the respondent/writ petitioner cannot lay his claim based upon the circular, dated 09.01.2017.

3.The learned counsel appearing for the respondent/writ petitioner submitted 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 earn leave per year was done away by the appellants Corporation on account of financial crises. Further, the action based on the settlement entered into under Section 12(3) of the Act was not available to the respondent/writ petitioner, because the appellants Transport Corporation is citing financial crisis. The learned Single Judge took into consideration the facts placed before him and also noted the circular dated 09.01.2017 and taking note of the fact that there is record to show that the appellants transport corporation pleaded financial crises for non-settling the surrender leave salary, allowed the writ petition.

4.While doing so, the Writ Court referred to an earlier order in the case of **A.Sundararajan Vs., Tamil Nadu State of Transport Corporation (Kumbakonam Limited) [W.P(MD).No.24245 of 2016 etc batch]**, wherein similar relief sought for has been granted and the writ petitions were allowed and the appellants Transport Corporation was directed to implement the same. Thus in our considered view, the learned Single Judge has rightly gone into the factual position and took note of stand of the appellants corporation as to why



earlier they did not permit surrender and allowed the writ petition. Therefore, we find that the appellants have not made out any ground to interfere with the order passed by the learned Single Judge.

5. For all the above reasons, this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

/ True Copy /

Sub Assistant Registrar (CS-)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-85586[F] dated 06/09/2019)
+1 CC to M/s.A.RAHUL, Advocate (SR-85781[F] dated 06/09/2019)

rmk

ORDER MADE IN
W.A. (MD) No.210 of 2019

ES/01.10.2019/3P/3C