



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 01.02.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P. (MD) No.15720 of 2018

and

W.M.P. (MD) No.14079 of 2018

P.Mohan

... 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.,
Kumbakonam Region,
Kumbakonam.

3.The Administrator,
Tamil Nadu State Transport
Corporation Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai-2.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in TNSTC/Kumba/Ma.Va.Me/Thani/2018, dated 22.03.2018, quash the same insofar as denying surrender leave salary citing financial crisis and consequently, direct the respondents to settle the petitioner's surrender leave salary for 189 days from 2011-2016 together with interest at the rate of 18% per annum payable from the date of retirement to till the date of actual payment.

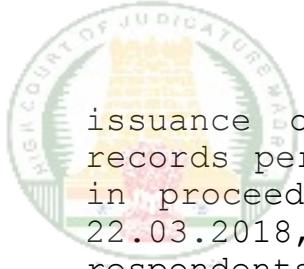
For Petitioner : Mr.A.Rahul

For R1 & R2 : Mr.D.Sivaraman

For R3 : Mr.A.P.Muthu Pandian

ORDER

This writ petition has been filed by the petitioner for



issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned circular of the first respondent in proceedings in Ref. No. TNSTC/KUMBA/Ma.Va.Me/Thani/2018, dated 22.03.2018, quash the same and consequently, directing the respondents to settle the petitioner's Surrender Leave Salary for 189 days from 2011-2016 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 petitioner was appointed as a Tradesman in the respondent Corporation on 28.08.1985, had retired an Assistant Engineer on 31.12.2016 after rendering nearly 30 years of service. According to the petitioner, he is entitled to earned leave at 2 ½ days per month. During the year, an employee can earn up to 30 days, out of which, he can surrender 15 days and encash the same during his service. Remaining 15 days will be accumulated till his retirement and after his retirement, he can encash earned leave with the ceiling limit of 240 days. This earned leave encashment benefit was granted to the employees of the respondent Corporation vide the settlement entered into under Section 12(3) of the Industrial Dispute Act on 13.02.1999.

3.The respondent Corporation settled the terminal benefits of the petitioner but however, refused to settle his earned leave salary for the year 2011 to 2016 citing financial crisis. In the pay slip of the petitioner for the month of December 2016, it is stated that he has got 429 days of earned leave to his credit. Since the respondent Corporation stopped payment of surrender leave salary citing financial crisis, the earned leave got accumulated till his retirement.

4.On 09.01.2017, the respondent Corporation issued a circular calling for option from the employees to surrender the earned leave and encash the same in respect of the year 2011-2016. The petitioner exercised his option pursuant to the said circular, however, the petitioner was informed that in view of the subsequent circular dated 22.03.2018, which is impugned in the present writ petition, the petitioner would not be granted the benefits. The petitioner would further contend that he has got 189 days of his surrender leave salary to his credit and was not allowed to encash the same citing financial crisis.

5.The petitioner would also rely upon the orders passed by this Court in other similar matters, wherein, this Court had directed the Corporation to pay the surrender leave salary in favour of the petitioners therein. In the above factual back drop, the petitioner seeks a Writ of Certiorarified Mandamus calling for the records relating to the circular dated 22.03.2018 to quash the same and to direct the respondent Corporation to settle his surrender leave salary for 189 days together with interest at 18% per annum from the date of retirement till date of payment.



6.The Writ Petition is resisted by the Corporation primarily on the ground that the entitlement under Section 12(3) settlement can be worked out only by way of the Claim Petition before the Labour Court and the Writ Petition is not maintainable. It is the further contention of the Corporation that the Writ Petition itself is belated, the petitioner was retired admittedly on 31.12.2016, has come forward with the Writ Petition only after two years since his retirement, therefore, the Writ Petition is hit by latches.

7.In similar circumstances, this Court had in A.Soundararajan V. The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd and another, made in WP No.14498 of 2017 had observed as follows:

"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.

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, 1947.

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."

The said judgement has been followed by another learned Single Judge in this Court (Hon'ble Mr.Justice Suresh Kumar) in WP No.2449 of 2018.

8.In view of the above pronouncements of this Court and the factual situation, I am of the considered opinion that the respondent Corporation is not justified in denying the benefits of earned leave salary to the petitioner. The right conferred the settlement under Section 12(3) of the Industrial Dispute Act, cannot be defeated by the circular issued by the Corporation. Moreover, by the Circular dated 09.01.2017, the Corporation has made it clear that the employees would be entitled to encashment of earned leave



salary. Therefore, I have no hesitation concluding that the impugned order passed by the respondent Corporation, rejecting the claim of the petitioner is unsustainable and accordingly it is quashed.

9. The Writ Petition is allowed. There will be a direction to the respondent Corporation to settle the leave salary / surrender leave encashment benefit depending on the eligibility for the relevant period. The claim made by the petitioner shall be considered by the Corporation without reference to the financial crisis and the petitioner shall be paid the amount equivalent to the earned leave salary within a period of 8 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed. "

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar

jv/rmi

To

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.,
Kumbakonam Region,
Kumbakonam.

3. The Administrator,
Tamil Nadu State Transport Corporation Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai-2.

1 CC to M/s.A.RAHUL, Advocate (SR-44351[F] dated 01/02/2019)
+1 CC to M/s.D.SIVARAMAN, Advocate (SR-44706[F] dated 04/02/2019)

order made in
W.P. (MD) No.15720 of 2018
and

W.M.P. (MD) No.14079 of 2018
01.02.2019