



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2019

CORAM:

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

W.A.[MD]No.1138 of 2019

and

C.M.P.[MD]No.10079 of 2019

1.The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Railway Station Road,
Kumbakonam,
Thanjavur District.

2.The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Periyamilaguparai,
Trichy.

: Appellants/Respondents 2 & 3

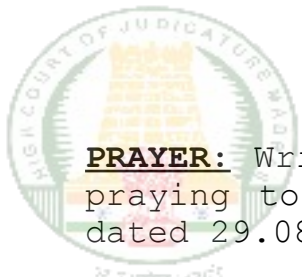
Vs.

1.P.Durairaju
2.P.L.Muthuraja
3.K.S.Rajagopalan
4.S.Balakrishnan
5.P.Singaram
6.M.Sathiyadoss
7.R.Punniyamoorthy
8.V.Thirugnanasambantham
9.K.Narayanasamy
10.N.Balakrishnan
11.R.Rajendran
12.P.Muthusamy
13.M.Ramasamy
14.M.Moorthy
15.M.Ramalingam

: Respondents 1 to 15/
Petitioners 1 to 15

16.The Government of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Transport Department,
Secretariat, Chennai - 600 009

: 16th Respondent/1st Respondent



PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, praying to set aside the order passed in W.P.[MD]No.18816 of 2018 dated 29.08.2018.

Prayer in WP(MD). 18816/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents to settle the petitioners benefit of enhancement of Earned Leave surrendered by them before the 3rd respondent from the year 2010 to till the date of retirement of the petitioners with interest at 6% as per the 1998 Wage Settlement Effect under Section 12(3) of ID Act, 1947.

For Appellants	: Mr.D.Sivaraman
For Respondents 1, 3, 5 to 11,14&15	: Mr.M.Sudhagar Nagaraj
For Respondents 2,4,12&13	: No appearance
For Respondent No.16	: Mr.A.K.Baskara Pandian Special Government Pleader

JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.D.Sivaraman, learned counsel appearing for the appellants, Mr.M.Sudhagar Nagaraj, learned Counsel appearing on behalf of respondents 1, 3, 5 to 11, 14 & 15 and Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing on behalf of the sixteenth respondent.

2.We had an occasion to consider the correctness of the similar order passed by the learned Single Judge, which was impugned before us in the writ appeals in W.A.(MD)No.201 of 2019 etc., batch and by judgment dated 04.09.2019, we have dismissed the appeals filed by the Transport Corporation. Operative portion of the judgment reads as follows:-

"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."

3.There is no distinguishing feature in the instant appeal as to why above judgment should not be applied to this case also. In
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the light of the same, we inclined to follow our earlier judgment and dismiss this Writ Appeal.

4.The learned counsel for the appellants submitted that in certain cases contempt petitions were filed and under the fear of action for contempt, settlements have been made and considering the financial position of the appellant Corporation, reasonable time may be granted.

5.In the light of the above, this Writ Appeals is dismissed and the appellant Transport Corporation is directed to settle the eligible benefits of the respondent / workmen in four [4] equal monthly installments and the first of such installment shall be paid on or before 18.11.2019 and subsequent installments shall be made on the 18th day of the every succeeding English calendar month. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

MR

To

1.The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Transport Department,
Secretariat, Chennai - 600 009.

2. The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Railway Station Road,
Kumbakonam, Thanjavur District.

3.The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Periyamilaguparai,
Trichy.

Judgment made in
W.A. [MD]No.1138 of 2019

Dated: 25.10.2019

JMN (22.11.2019) 4P : 4C

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