

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 03.12.2019****CORAM:****THE HONOURABLE MR. JUSTICE M.S. RAMESH****W.P. (MD) No. 25686 of 2019**

WEB COPY

V. Selvaraj

... 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., Nagapattinam Region, Nagapattinam

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus, to call for the records pertaining to the impugned order in TNSTC/KUMBA/LAW/L2/23677/2017 dated 09.02.2018 passed by the second respondent, quash the same and consequently direct the respondents to settle the petitioner's surrender leave salary for 75 days from 2011-2015 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.P.Balasubramanian, Standing Counsel.

O R D E R

By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

2. When the petitioner herein had claimed the salary for the surrendered leave for 75 days from 2011 to 2015, the same came to be rejected through the impugned order, dated 09.02.2018 citing that the petitioner had not claimed encashment of the surrender leave within the stipulated time.

3. The issue involved in the present writ petition as well as the reasons adduced by the first respondent in the impugned order came up for consideration before the Division Bench of this Court in W.A(MD) No.210 of 2019 and the Hon'ble Division Bench by judgment dated 04.09.2019 had upheld the view of the learned Single Judge against which the writ petition came to be filed and also rejected the corporation plea that the employee had not claimed the



encashment of the surrender leave within the stipulated time. The relevant portion of the said order 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.

4. In the present case, the facts are identical to the facts involved in the writ appeal in W.A(MD) No.210 of 2019 and as such, this Court is of the view that the petitioner would be entitled to claim salary for the surrendered leave.

5. For all the forgoing reasons, the impugned order in TNSTC/KUMBA/LAW/L2/23677/2017 dated 09.02.2018 is set aside. Consequently, the petitioner is granted liberty to make a representation enclosing the copy of this order seeking for settlement of his surrender leave salary and on receipt of the such representation, the respondents herein shall positively disburse the eligible leave salary through four equated monthly installments. The second respondent shall ensure that the first installment is disbursed at least within a period of four weeks from the date of receipt of a copy of this order along with representation.

6. With the above directions, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (crl side)

// True Copy //

Sub Assistant Registrar(CS)

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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.,
Nagapattinam Region,
Nagapattinam

+1 CC to Mr.P.BALASUBRAMANIAN, Advocate (SR-103448[F] dated 04/12/2019)

+1 CC to Mr.A.RAHUL, Advocate (SR-103472[F] dated 04/12/2019)

W.P. (MD) No.25686 of 2019

03.12.2019