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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **27.01.2020**
CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD) No.1502 of 2020

K.Regunathan ... Petitioner

/vs./

The Managing Director,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
No.27, Railway Station New Road,
Kumbakonam 612 001. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus, to direct the respondent to pay surrender leave salary for 94 days surrendered while in service along with 6% interest.

For Petitioner : Mr.C.Thangamani
For Respondent : Mr.P.Balasubramanian
Standing Counsel.

ORDER

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

2.Since the petitioner who is the retired employee of the Transport Corporation, claims to have not been paid with the surrender leave salary of 94 days for the period from 2010 to 2017, the present writ petition has been filed seeking for direction in that regard.

3.The petitioner would submit that he has already made a representation dated 29.11.2019 in this regard, which is said to be pending. If the said representation is directed to be disposed of within stipulated time, the ends of justice could be secured.

4.Whenever a representation is made to a statutory authority to redress the claim of the employee, there is a duty cast upon the respondents to consider the same on its own merits and pass appropriate orders in one way or other, instead of keeping the same pending indefinitely. Such an inaction would amount to dereliction of duties and thereby this Court would be justified in invoking its extraordinary powers under Article 226 of Constitution of India and thereby direct such authority to consider the representation within the stipulated time.

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5.An identical issue 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 appeal 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*

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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.'*

6.In the light of the above, this Court is of the view that the petitioner would be entitled to claim salary for the surrendered leave.

7.For all the forgoing reasons, although the petitioner has made a representation dated 29.11.2019, the petitioner is directed to make a fresh representation, enclosing a copy of this order, seeking for settlement of his surrender leave salary and on receipt of the such representation, the respondent herein shall consider the same and disburse the eligible leave salary through four equated monthly installments in the light of the aforesaid Division Bench Judgment. The respondent shall ensure that the first installment is disbursed at least within a period of four weeks from the date of receipt of fresh representation along with this copy of this order.

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

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To:

The Managing Director,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
No.27, Railway Station New Road,
Kumbakonam 612 001.

+1 CC to M/s.C.THANGAMANI, Advocate (SR-3083[F] dated 27/01/2020)

+1 CC to M/s.P.BALASUBRAMANIAN, Advocate (SR-3562[F] dated 29/01/2020)

Order made in
W.P.(MD)No.1502 of 2020
27.01.2020

rmk
SDS(10.02.2020) 4P-4C

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