



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.02.2020**

CORAM:

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

W.P.(MD) No.4135 of 2020

S.Esuraj

... Petitioner

/vs./

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

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

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus, to direct the respondents to settle the petitioner's surrender leave salary for 155 days in respect of the years 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017 and 2017-2018 together with interest at the rate of 18% per annum payable from the date for retirement to till the date of actual payment.

For Petitioner : Mr.D.Senthilkumar

For Respondents : 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 155 days for the period from 2011 to 2018, 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 09.12.2019 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.

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.



Judgment. The respondents 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)

To:

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

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

+1 CC to M/s.P.BALASUBRAMANIAN, Advocate (SR-9369[F]

+1 CC to M/s.D.SENTHIL KUMAR, Advocate (SR-9343[F]

Order made in
W.P. (MD) No. 4135 of 2020
28.02.2020

rmk

SDS (13.03.2020) 4P-5C