BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.07.2020**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.6766 of 2020

(Through Video conferencing)

B.Jeevan Moorthy ...Petitioner

-Vs-

1.The Managing Director,
Tamil Nadu Stat Transport Corporation
(Madurai) Ltd.,Madurai Region,
Bye Pass Road, Madurai.

2.The Chief Accounts Officer,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Madurai Region, Bye Pass Road,
Madurai. ...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Mandamus, directing the respondents to transfer the petitioner's retirement benefits such as Employees Provident Fund, Gratuity, Earned Leave Wages, Surrender leave wages and IRT share amount payable to the petitioner with 16% rate of interest to his savings account No.1580010000009602 in Indian Overseas Bank, Bye-pass Road, Madurai Branch, Madurai on or before 07.07.2020.

For Petitioner : Mr.G.M.Xavier

For Respondents : Mr.J.Senthil Kumaraiah

ORDER

The prayer in this writ petition is for a writ of Mandamus, directing the respondents to transfer the petitioner's retirement benefits such as Employees Provident Fund, Gratuity, Earned Leave Wages, Surrender leave wages and IRT share amount payable to the petitioner with 16% rate of interest to his savings account No.1580010000009602 in Indian Overseas Bank, Bye-pass Road, Madurai Branch, Madurai on or before 07.07.2020.

2.Heard Mr.G.M.Xavier, learned counsel appearing for the petitioner and Mr.J.Senthil Kumaraiah, learned standing counsel for TASMAC.

3.The grievance of the petitioner, as projected by the learned counsel appearing for the petitioner is that, the petitioner was working as Senior Superintendent. After 32 years of service rendered by him, he retired on superannuation on 29.02.2020. Though he retired in February 2020, none of the retirement benefits payable to the petitioner, such as Provident Fund, Gratuity, Earned Leave salary and Surrender Leave Salary, so far has not been paid to the petitioner. The said amount according to the calculation submitted by the petitioner comes about Rs.26 lakhs and even a single pie since has not been paid to the petitioner, he has made a request to that effect by giving representation dated 13.03.2020 to the respondents. Since nothing was forthcoming from the respondents, the petitioner has approached this Court by filing this writ petition.

4.The learned standing counsel appearing for the respondent Corporation has fairly submitted that, retirement benefits referred to in the request of the petitioner dated 13.03.2020, certainly, is a due payable to the petitioner. However, he disputes the amount of Rs.26 lakhs as has been calculated by the petitioner and according to the learned standing counsel for the 1st respondent, calculation may differ.

5.The learned standing counsel would also submit that due to COVID 19 situation, for the past four months, the respondent Corporation is not plying the buses, due to which, it is in severe financial crunch and crises. Therefore, this kind of retirement benefits cannot be granted at a stretch i.e., the entire retirement benefits to the employees as one time payment as that will cause great financial burden to the Corporation, unless and until some bulk aid is given from the Government from time to time. Except from the aforesaid difficulties as expressed by the learned standing counsel appearing for the transport Corporation, the entitlement of the petitioner to get those retirement benefits is not disputed. Though the quantum of the amount has been disputed by the learned standing counsel for the respondents, the majority of the claim made by the petitioner cannot be denied as those are all the statutory dues on retirement of any employee to be paid by the employer.

6.In this case, it is also brought to the notice of this Court by the learned counsel appearing for the petitioner that, the writ petition has been filed in the month of June 2020 in anticipation of an early disposal so that the petitioner would be in a position to get the retirement benefits, which he can mainly make use of performing the marriage of his daughter which was originally fixed on 12.07.2020 of this month i.e., Yesterday. But, without getting this amount, the said marriage was already over, of course, after borrowing hand loan by the petitioner. Therefore, the petitioner is in severe financial crisis therefore atleast, the portion of the retirement benefits can immediately be directed to be paid by the 1st respondent to the petitioner.

7.I find some force in the said plea made by the learned counsel appearing for the petitioner. This Court understand the financial crisis faced by the 1st respondent Corporation due to COVID 19 situation as public transport has been in complete halt and therefore, the recurring revenue may not come to the 1st respondent

Corporation for the past four months. But, at the same time, when an employee retires on superannuation, retirement dues cannot be withheld by the 1st respondent Corporation by stating any financial crisis and in this context, if at all, the 1st respondent shows any financial constraint as a reason, instead of paying entirety of the retirement benefits to the employee, at least, some part payment can be made immediately, so that the retired employee can meet out the family expenses like marriage, medical expenses etc.

8.Therefore, considering the ovarall situation as has been projected in this case and by taking into account the aforesaid facts, this Court is inclined to pass the following order:

> "The respondents shall calculate the retirement benefits under various heads such as, Provident Fund, Gratuity, Earned Leave and Surrender Leave Salary from 29.02.2020 payable to the petitioner and out of the calculated amount, atleast, 25% of the amount shall be immediately paid to the petitioner preferably, within a period of two weeks from the date of receipt of a copy of this order. Insofar as the remaining amount of the retirement benefits is concerned, the respondent Management can negotiate with the petitioner to fix the instalments, within which, the remaining amount can be paid to the petitioner. While making such negotiation, exact payable quantum of the retirement benefits to the petitioner also can be finalized in order to avoid further litigation and the aforesaid exercise shall be finalized within a period of eight weeks from the date of disbursement of 25% amount payable to the petitioner as stated above.

9.With this direction, this writ petition is ordered accordingly. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
1.The Managing Director,
Tamil Nadu Stat Transport Corporation
(Madurai) Ltd.,Madurai Region,
Bye Pass Road, Madurai.

2.The Chief Accounts Officer,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Madurai Region, Bye Pass Road,
Madurai.

Order made in
W.P.(MD)No.6766 of 2020
13.07.2020

SMA/04/08/2020/4P/3C