



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.02.2020**

CORAM:

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

W.P. (MD) No.16009 of 2016

and

W.M.P. (MD) .No.11713 of 2016

R.Subendran

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Transport Department and Chairman of Board Directors
of State Transport undertakings,
Fort St.George,
Chennai-600 009.
- 2.The Tamil Nadu StateTransport Corporation (Kumbakonam) Limited,
Rep. by its Managing Director,
Kumbakonam,
Thanjavur District.
- 3.The General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Trichy Region,
Trichy.
- 4.The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai-600 002.

.. 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 on the file of the second respondent pertaining to its order in Parvai:Tha.A.Po.Ka/Trichy/Sa.Pe5/1474/2016 dated 14.04.2016 and to quash the same and consequently direct the third respondent to settle as per the 1998 year Wage Settlement Effect under Section 12(3) of ID Act, 1947, the petitioner's earned leave salary for 75 days for the years 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 of Rs.93,585/- together with interest at the rate of 18% per annum payable from the date of retirement to till date of actual payment.



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For Petitioner	: Mr.N.Sudhagar Nagaraj
For Respondent No.1	: Mr.R.Sethuraman Special Government Pleader
For Respondent Nos.2 and 3	: Mr.D.Sivaraman Standing Counsel
For Respondent No.4	: Mr.A.P.Muthupandian

ORDER

When the petitioner herein had claimed the salary for the surrender leave for 75 days from 2010 to 2015, the same came to be rejected through the impugned order, dated 14.04.2016 citing that the petitioner had not claimed encashment of the surrender leave within the stipulated time.

2.The similar 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.

3. 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.

4. For all the forgoing reasons, the impugned order in Tha.A.Po.Ka/Trichy/Sa.Pe5/1474/2016, dated 14.04.2016, is set aside. Consequently, the petitioner is granted liberty to make a representation enclosing a 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 surrender leave salary through four equated monthly installments. The third 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.



5.With the above directions, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

PJL

To

1. The Secretary to Government,
The State of Tamil Nadu,
Transport Department and Chairman of Board Directors
of State Transport undertakings,
Fort St.George,
Chennai-600 009.
2. The Managing Director,
Tamil Nadu StateTransport Corporation (Kumbakonam) Limited,
Kumbakonam,
Thanjavur District.
3. The General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Trichy Region,
Trichy.

+1 CC to Mr.D.SIVARAMAN, Advocate (SR-9007[F] dated 27/02/2020)

+1 CC to Mr.N.SUDHAGAR NAGARAJ, Advocate (SR-9190[F] dated 28/02/2020)

+1 CC to SPL.GP (SR-9647[F] dated 02/03/2020)

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