BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2021

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

W.P.(MD) No.4970 of 2021

D.Ganapathy ... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
New Railway Station Road,
Kumbakonam - 612 001.

2.The General Manager,
The Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Kumbakonam Region,
Kumbakonam - 612 001. .. Respondents

**PRAYER** : Writ petition filed under Article 226 of the Constitution of India to issue a writ of mandamus, directing the respondents to settle the petitioner's surrender leave salary for 109 days in respect of the years 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017 , 2017-2018 and 2018-2019 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.K.Gokul
For Respondents : Mr.P.Balasubramanian,
Standing Counsel

**O R D E R**

This writ petition has been filed for issuance of Writ of Mandamus, directing the respondents to settle the petitioner's surrender leave salary for 109 days in respect of the years 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017 , 2017-2018 and 2018-2019 together with interest at the rate of 18% per annum payable from the date of retirement to till the date of actual payment.

2.Heard Mr.K.Gokul, learned counsel appearing for the petitioner and Mr.P.Balasubramanian, learned Standing Counsel appearing for the respondents.

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

4.The grievance of the petitioner is that after his retirement, the respondents have not settled the surrender leave salary and therefore, he claims the disbursement of the same together with interest.

5.The learned counsel for the petitioner, as well as the learned Standing Counsel appearing for the respondents, submitted that the issue involved in the present writ petition is covered by various orders of this Court, including the order, dated 13.12.2019, passed in the case of ***S.Alagesan Vs. The Managing Director, Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., and another*** in ***W.P.(MD).No.26487 of 2019.*** The relevant portion of the order reads as follows:

> *"4. 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 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:-*
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> > *'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.'*

*5. 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."*

6.In view of the aforesaid decision being in favour of the petitioner, this Court is also of the view that the petitioner herein is entitled to succeed in the present writ petition.

7.At this juncture, Mr.P.Balasubramanian, learned Standing Counsel appearing for the respondent Corporation submitted that the Division Bench of this Court as well as the learned Single Judges of this Court in many cases have ordered for payment of earned leave salary, but have not granted interest and therefore, he submitted that the interest need not be paid for non surrender of earned leave.

8.In all the decisions cited by the learned Standing Counsel, both the Division Bench, as well as the learned Single Judges, there is no discussion with regard to the non entitlement of the interest. Since there is no dictum laid down in any of the decisions to the effect that the employees will not be entitled for interest on belated payment of earned leave, I am unable to accept these submissions made by the learned Standing Counsel.

9.Accordingly, there shall be a direction to the respondents herein to settle the surrender leave salary for 109 days, in respect of the years 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017 , 2017-2018 and 2018-2019 together with interest at the rate of 6% per annum from the date of retirement till the date of actual disbursement. The respondents shall be entitled to disburse the surrender leave salary in six Equal Monthly Installments and the 1st Installment shall commence from 1st of April 2021.

10.This writ petition stands allowed accordingly. No costs.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM

*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

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Kumbakonam - 612 001.

+1 CC to M/s.P.BALASUBRAMANIAN, Advocate ( SR-10072[F] dated 10/03/2021 )

+1 CC to M/s.K.GOKUL, Advocate ( SR-10351[F] dated 11/03/2021 )

**W.P.(MD) No.4970 of 2021**
**09.03.2021**

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