



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.12208 of 2021

1.R.Gunasekaran
2.R.Annadurai
3.G.Balasundaram
4.N.Subramanian

... Petitioners

Vs.

1.The Government of Tamilnadu,
Rep. by its Secretary to Government,
Transport Department,
Secretariat,
Chennai-600 009.

2.The Managing Director,
Tamilnadu State Transport Corporation
(Kumbakonam), Ltd.,
Railway Station Road,
Kumbakonam-612 001,
Thanjavur District.

3.The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Railway Station Road,
Kumbakonam-612 001,
Thanjavur District.

4.The General Manager,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Ltd.,
Periyamilaguparai,
Trichy Region,
Trichy District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to settle the petitioners' benefit of encasement of Earned Leave surrendered by them before the second to fourth respondents from the year 2010 to till the date of retirement of the petitioners with interest at 18% as per the 1998 Wage Settlement Effect under Section 12(3) of ID Act, 1947.

For Petitioners : Mr.N.Sudhagar Nagaraj

For Respondents : Mr.P.Balasubramanian

Standing Counsel for TNSTC



ORDER

This writ petition has been filed for a direction to the respondents to pay the petitioners' surrender leave salary from the year 2010 to till the date of retirement of the petitioners with interest at 18% as per the 1998 Wage Settlement Effect under Section 12(3) of ID Act, 1947.

2. Heard Mr.N.Sudhagar Nagaraj, learned counsel appearing for the petitioners 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 petitioners is that after their retirement, the respondents have not settled the surrender leave salary and therefore, they claim the disbursement of the same together with interest.

5. The learned counsel for the petitioners, 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 said 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:-

'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



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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 petitioners, this Court is also of the view that the petitioners herein are entitled to succeed in the present writ petition.

7. At this juncture, Mr. P. Balasubramanian, learned Standing Counsel appearing for the respondents 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 the belated payment of leave salary.

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 surrender leave salary, 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 from the year 2010 to till the date of retirement of the petitioners, 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 September 2021.

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

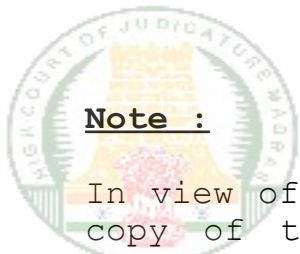
Sd/-

Assistant Registrar (CSII)

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/ /2021

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

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The Government of Tamilnadu,
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+1 CC to M/s.GP (SR-23511[F] dated 22/07/2021)

+1 CC to M/s.M.SUDHAGAR NAGARAJ, Advocate (SR-23544[F] dated 22/07/2021)

+1 CC to M/s.P.BALASUBRAMANIAN, Advocate (SR-23547[F] dated 22/07/2021)

W.P. (MD)No.12208 of 2021
20.07.2021

MJ(CO)
KB(28.07.2021) 5P 8C