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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 31.03.2022

PRONOUNCED ON : 14.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.3856 of 2013

The Secretary,
All India Loco Running Staff Association,
16/1, Senghol Nagar, Madurai - 18. ... Petitioner
vs.

- 1.The Presiding Officer,
Central Government Industrial,
Tribunal-cum-Labour Court,
Chennai.
- 2.The Divisional Railway Manager,
Southern Railway, Madurai Division,
Madurai.
- 3.The Chief Operation Manager,
Southern Railway, Park Town,
Chennai- 600 003.
- 4.Ministry of Labour and Employment,
Government of India,
Sharam Shakti Bhawan, Rafi Marg,
New Delhi-110 001.
- 5.Ministry of Railways,
Rail Bhawan, New Delhi. ... Respondents

***(R4 and R5 are Suo Motu impleaded,
vide Court Order, dated 13.12.2021,
in WP (MD)No.3856 of 2013)***

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the award made in Industrial Dispute No.19 of 2011, dated 22.05.2012, passed by the 1st respondent and to quash the same and consequently, to direct the 2nd and 3rd respondents to calculate the out station rest hours for weekly average hours.

For Petitioner	: Mr.G.Karthik for Mr.T.Lajapathi Roy
For R1	: Court
For R2 and R3	: Mr.S.Manohar
For R4 and R5	: M/s.L.Victoria Gowri,ASGI



O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the award made in Industrial Dispute No.19 of 2011, dated 22.05.2012, passed by the 1st respondent and to quash the same and consequently, to direct the 2nd and 3rd respondents to calculate the outstation rest hours for weekly average hours.

2. The petitioner who is the Secretary of All India Loco Running Staff Association raised an Industrial Dispute with regard to calculation of the outstation rest hours for weekly average hours. The Central Government, vide order, dated 08.03.2011, referred the matter for adjudication before the Tribunal. The petitioner filed a detailed statement before the Tribunal and the Railway management also filed a counter statement. The petitioner and other co-workers were examined as witnesses on the side of the Union. Seven exhibits were marked. On the side of the management, no witnesses were examined and no documents were marked. However, the Tribunal rendered a finding that no relief can be granted to the petitioner Union without an amendment to the relevant statutory rules. Hence, the impugned award, dated 22.05.2012, was passed rejecting the reference. Aggrieved over the same, the present Writ Petition is filed.

3. The grievance of the Association is that the members of the petitioner Union are working as loco running staff in Southern Railways. The members have a Home Station. When they report for duty, they sign in "On Register". After taking charge of the train, they run the same as per the roster given to them and reach the destination Station. Thereafter, they were given a break. Having arrived at the destination Station, they should sign in "Off Register". They have to wait at the running room in the destination Station for picking up by the pairing train. Thereafter, they would return to Home Station.

4. The contention of the petitioner is that a legal issue was raised to treat the so called out station rest hours. The members are constrained to be confined in running room and they are not having liberty to move freely. They continue to remain under the control and disposal of the Railway Management. In one instance, where the employee went out for having his food, he was not only proceeded against departmentally, but was also awarded punishment. In another case, the employee after informing the superior, returned home for voting. He was also proceeded by initiating departmental



proceedings. The petitioner further contended that the said facts were not considered by the management.

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5.The Association further narrates that the loco running staff leaves the Home Station, he has to be away for 3 to 4 days, without any duty, but will be forced to take rest in the running room. He should be available for receiving instructions and he should remain confined in the running room but he is not at liberty to move freely. In short, without any work or without any duty, the running staffs are forced to take "forceful rest" in the destination station for more than 2 to 3 days, which means they will be forced to take rest for more than 72 hours in the out station. The Association states that it is like confining the person without work to take compulsory rest and it is against human nature.

6.The second and third respondents have filed a detailed counter affidavit stating that the Chapter XIV of Regulation of Hours of Work and Period of Rest of the Railways Act, 1989 (Act 24 of 1989), enacted by the Parliament in the 40th year of Republic of India. Under Section 136 of the Act conferred power to the Central Government to make Rules to carry out the purpose of the chapter. Accordingly, the Railway Servants (Hours of Work and Period of Rest) Rules, 2005, was enacted to amend the Railway Servants of (Hours of Employment) Rules, 1961. Rule 12 of the Rules deals with Periodical Rest and Sub Rule (3) states "Locomotive of traffic running staff shall be granted, each month a rest of atleast five periods of not less than twenty two consecutive hours each or a rest of atleast four periods of not less than the consecutive hours each including a full night. The hours of work for this purpose shall be calculated from "signing on" to "signing off". Therefore, the learned Counsel appearing for the second and third respondents submitted that the Railway is acting as per the Act and Rules. Therefore, the petitioner's plea cannot be considered.

7.Heard Mr.G.Karthik, learned Counsel appearing for the petitioner, Mr.S.Manohar, learned Counsel appearing for the second and third respondents and M/s.L.Victoria Gowri, learned Counsel appearing for the fourth and fifth respondents.

8.After hearing the arguments of the petitioner and respondents and on perusal of the records, it is seen that the respondents 2 and 3 are acting as per the Act and Rules. The plea of the petitioner cannot be resolved by the Tribunal, since the Act and Rules ought to be revisited and the statutory rules should be amended. Therefore,



this Court impleaded the Ministry of Labour and Employment, Government of India and the Ministry of Railways as fourth and fifth respondents.

9. Therefore, this Court is directing the Ministry of Railways, the fifth respondent herein to take up this issue and consider the claim of the petitioner Association. The fifth respondent is directed to issue notice to the concerned Association and all the interested parties and thereafter, shall address the issue raised by the Association. If need be, an amendment shall be proposed. The fifth respondent is directed to consider and take necessary steps to address the issue raised by the petitioner Association and pass orders within a period of twelve weeks from the date of receipt of a copy of this order.

10. With the above direction, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (Admin I)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

Tmg

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 Presiding Officer,
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2. The Divisional Railway Manager,
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3.The Chief Operation Manager,
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5.Ministry of Railways,
Rail Bhawan, New Delhi.

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-25700[F] dated
15/06/2022)

+1 CC to M/s.S. MANOHAR, Advocate (SR-26209[F] dated 16/06/2022)

W.P. (MD) No. 3856 of 2013

14.06.2022

MGJ(23.06.2022) 5P 8C