



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.876 of 2022

A.Shanmugavel

... Petitioner

versus

1. The Managing Director,
Tamil Nadu State Transport
Corporation (TNSTC)
Madurai Division,
Registrar Office,
Bye Pass Road,
Madurai.

2. The General Manager,
Tamil Nadu State Transport
Corporation (TNSTC),
Virudhunagar Region,
Virudhunagar District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to direct the second respondent to pay interest for the period of delay from 2011 to 07.10.2021 in paying the amount of earned leave surrender benefits, based on the petitioner's representation dated 01.12.2021.

For Petitioner : Mr.S.Ayyanar Premkumar
For Respondents : Mr.J.Senthil Kumariah
Standing Counsel

ORDER

This writ petition has been filed for a Mandamus, directing the second respondent to pay interest for the belated payment of surrender leave salary, based on the petitioner's representation dated 01.12.2021.

2. The learned counsel for the petitioner submits that the petitioner served in the respondent Transport Corporation and he retired from service on 30.04.2015. Though he was paid with all retirement benefits, the surrender leave salary amount of Rs.46545/- was not paid to him. Despite his several request, the respondents did not come forward to settle the surrender leave salary. Therefore, he filed a writ petition in W.P.(MD)No.12432 of 2021, which was disposed of by this Court, vide order dated 23.07.2021. Thereafter only, the respondents have settled the surrender leave salary amount of Rs.46545/- only on 07.10.2021. Since the surrender leave salary amount was paid belatedly, he is entitled for the



interest for the belated payment of surrender leave salary. Therefore, he submitted a representation dated 01.12.2021, requesting the respondent to pay interest for the belated payment of surrender leave salary. But, the same was not considered. Therefore, the petitioner has filed the present writ petition.

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3. Mr.J.Senthil Kumariah, learned Standing Counsel, takes notice for the respondents and submits that in view of the financial crisis, the surrender leave salary amount has not been settled to the petitioner in time. According to him, the Surrender Leave Salary was already paid to the petitioner and there is no statutory obligation for the respondents to give any interest for the belated payment of surrender leave salary. The learned counsel has also relied on similar Orders passed by this Court in W.P(MD) Nos.24245, 24247 and 24250 of 2016, dated 20.12.2016 and W.P(MD) No 12851 of 2020 dated 28.09.2020, in support of his contention that this Court has not entertained such a relief of payment of interest for the belated payment of surrender leave salary.

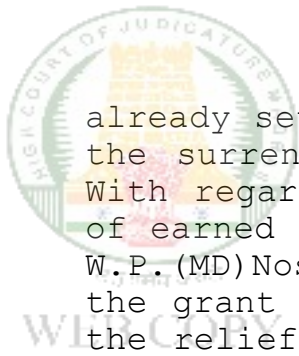
4. Heard the rival submissions made herein.

5. The writ petition is filed seeking interest for the belated payment of surrender leave salary. The petitioner is an employee of the transport corporation and he retired from service in the year 2015, but, the surrender leave salary was settled only in the year 2021 and therefore, the petitioner claimed for interest for the belated payment of Surrender Leave Salary.

6. A retiring employee is entitled for encashment of earned leave at his credit on the date of retirement or death subject to a maximum of 240 days. The rate of Leave Salary shall be the monthly salary. The employees are permitted to surrender earned leave at anytime in one Financial Year and there must be twelve months gap from one surrender to another surrender. The surrender leave benefit was also available with respondent corporation. However, the surrender leave salary has not been disbursed from the year 2011 onwards in view of the financial crisis of the Tamilnadu State Corporations.

7. The claim of earned leave surrender salary for 15 days per year or 30 days once in two years has been admitted in the settlement arrived between the corporation and the Employees Trade Union under Section 12(3) Industrial Disputes Act, 1947. The Transport Corporation issued a circular on 09.01.2017 permitting the earned leave salary for its employees. The stand of the Corporation is that the circular dated 09.01.2017 is meant only for the existing employees and not for the retired employees.

8. The surrender of earned leave salary is not only applicable to the existing employees and also to the retired employees, retirement on medical invalidation and legal heirs of the deceased employees. The entitlements for the earned leave benefits was



already settled by various Judgment of this court and in this case, the surrender leave salary was already settled to the petitioner. With regard to the entitlement of interest for the belated payment of earned leave salary, this Court, vide order dated 20.12.2016, in W.P.(MD)Nos.24245, 24247 and 24250 of 2016, has permitted only for the grant of Leave Salary though the writ Petitions were filed for the relief payment of interest for the belated payments. A similar stand was taken by this Court in W.P.(MD)No.12851 of 2020, dated 28.09.2020. However, in W.P.(MD)No.1502 of 2020, vide order dated 27.01.2020, this Court permitted the payment of interest for the belated payment of surrender of earned leave. A Division Bench of this court in W.A(MD) No.210 of 2019, by Judgment dated 04.09.2019, has also granted the relief of leave salary without any interest.

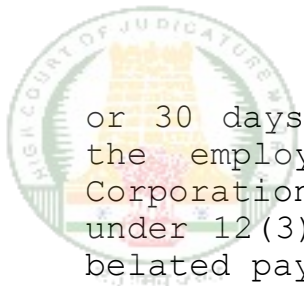
9. Pension, Gratuity, Commutation, Earned Leave, GPF are termed as retirement benefits or terminal benefits. The Gratuity Act provides for 10% of interest for the belated payment of gratuity amount. However, there is no other statutory rule provides interest for the belated payment of other terminal benefits. May be, the Legislature are not expected this kind of delay in Payment of retirement benefits. The State Transport Corporation is also providing certain welfare measures to the citizens, such as, free travel pass to the students, free tickets to the women etc.

10. The Government is not providing compensation to this welfare schemes and ultimately, the corporation is facing financial crises. The welfare scheme alone was not the sole reason for the financial crises of the transport department. The mismanagement and non administration also contribute to some extent. The employees and traders unions are silent spectators of the non administration and also responsible to some extent for the financial crisis.

11. Though there is no statutory obligation for the management to pay interest for the belated payment of terminal benefits, the Apex Court in **S.K.Dua vs. State of Haryana** reported in **2008 (3) SCC 44** held that the retirement benefits are not in the nature of bounty and even in the absence of any statutory rules, administrative instructions or guidelines, an employee can claim interest under part III of the Constitution by relying on Article 14,19 and 21 of the Constitution of India. Following the Judgment of the Hon'ble Supreme Court, this Court passed several orders, directing the Management to pay interest at the rate of 6% for the belated payment of terminal benefits.

12. It is to be noted that though the Hon'ble Apex Court in **S.K.Dua's case** has not prescribed the quantum of interest eligible amount for the belated payment of terminal benefits, this Court fixed 6% interest for the terminal benefits by taking into consideration of financial crisis of the transport corporation.

13. As discussed above, Surrender Leave Salary is eligible to an employee in a Financial Year for 15 days within a calendar year



or 30 days in two years. The Surrender Leave salary was denied to the employees in view of the financial crisis faced by the Corporation. It is agreed between the Management and the Union under 12(3) Settlement that there shall not be any interest for the belated payment of surrender of earned leave.

14. Considering the financial crisis faced by the Transport Corporation and the 12(3) settlement, this court in earlier orders referred above, has not granted any interest for the belated payment of surrender leave. Therefore, this court is not inclined to grant interest for the belated payment of surrender leave salary.

15. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (AD-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Managing Director,
Tamil Nadu State Transport
Corporation (TNSTC)
Madurai Division,
Registrar Office,
Bye Pass Road,
Madurai.
2. The General Manager,
Tamil Nadu State Transport
Corporation (TNSTC),
Virudhunagar Region,
Virudhunagar District.

+1 CC to M/s.S.AYYANAR PREM KUMAR, Advocate (SR-2000[F] dated 21/01/2022)

W.P(MD)No.876 of 2022
21.01.2022

RK(01/04/2022) 4P 4C