



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

WEB COPY

W.P. (MD) .No.1236 of 2015

C.Mohammed Mohideen Pitchai (Died)

... Petitioner

M.Aysha Beevi

W/O.Late Mohammed Mohideen Pitchai

(The legal heir of the petitioner is substituted vide Court order dated 13.04.2022 in W.M.P.(MD).No.3558 of 2022 in W.P.(MD).No.1236 of 2015)

Vs.

1.The Union of India,
Represented by its Secretary,
Surface Transport and Shipping,
New Delhi.

2.The Chairman,
Tuticorin V.O.C. Port Trust,
Bharathi Nagar,
Thoothukudi - 4.

3.The Traffic Manager,
Tuticorin V.O.C. Port Trust,
Bharathi Nagar,
Thoothukudi - 4.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the second and third respondents to grant salary to the petitioner for the injury period from 28.01.2008 to 01.12.2008 as per the Tuticorin Port Trust Leave Regulation, 1979 provided for the workers in the Tuticorin Port Trust Cargo Handling Pool, within the time stipulated by this Court.

For Petitioner	:	Mr.P.Saravana Kumar
For R-1	:	Mr.S.Jeya Singh
For R-2 and R-3	:	Mr.A.Arivuchandran

ORDER

This Writ Petition has been filed for Mandamus to grant salary to the petitioner for the injury period from 28.01.2008 to 01.12.2008 as per the Tuticorin Port Trust Leave Regulation, 1979 provided for the workers in the Tuticorin Port Trust Cargo Handling Pool.



2. The petitioner was appointed as daily wage worker and worked up to 1981. From 1981 to 1989, he was working as Maistry. Thereafter, he was promoted as Tally Clerk. The working hours of the petitioner is 8 hours per day and the working hours are divided into 3 shifts such as 5.00 a.m to 2.00 p.m is the first shift, 1.00 p.m to 10.00 p.m is the second shift and 9.00 p.m to 6.00 a.m. is the third shift. During the first shift, between 5.15 a.m and 5.30 a.m, the work will be allotted and between 5.30 a.m to 6.00 a.m., the petitioner ought to reach the working spot. The petitioner while going to the work on 28.01.2008 as first shift and after making an entry into the computer, as a pillion driver, the petitioner met with an accident, when he was about to reach the working spot and admitted in the hospital. From 28.01.2008 to 01.12.2008, he underwent 6 operations in his leg. The said period was considered as loss of pay by the second and third respondents. But now the petitioner is claiming to grant salary.

3. The respondents have filed a counter stating that after booking at call point, the respondents provided bus facilities to the employees to reach the work spot. The petitioner instead of availing bus facilities, used his own vehicle and met with an accident due to rash and negligent driving. Therefore, the petitioner is not entitled to any relief and prayed to dismiss the Writ Petition.

4. Heard Mr.P.Saravana Kumar, learned counsel for the petitioner and Mr.S.Jeya Singh, learned counsel for the first respondent and Mr.A.Arivuchandran, learned counsel for the second and third respondents.

5. It is seen from the records that the respondents have granted bus facilities, inspite of the same, the petitioner used his two wheeler to reach the work spot. Moreover, the negligence is attributable on the driver of the two wheeler. To meet the ends of justice, therefore this Court directing the second and third respondents to pay 1/3rd salary for the said period. The said exercise shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order.

6. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs.

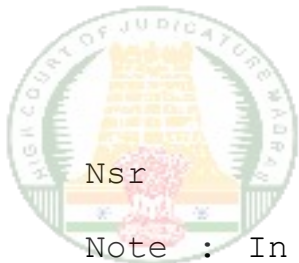
Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

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

1.The Secretary,
The Union of India,
Surface Transport and Shipping,
New Delhi.

2.The Chairman,
Tuticorin V.O.C. Port Trust,
Bharathi Nagar,
Thoothukudi - 4.

3.The Traffic Manager,
Tuticorin V.O.C. Port Trust,
Bharathi Nagar,
Thoothukudi - 4.

+1 CC to M/s.M. SIDDHARTHAN, Advocate (SR-18530[F] dated 13/04/2022)

+1 CC to M/s.A. ARIVUCHANDRAN, Advocate (SR-18490[F] dated 13/04/2022)

+1 CC to M/s.S. JEYASINGH, Advocate (SR-18644[F] dated 13/04/2022)

W.P. (MD) .No.1236 of 2015
13.04.2022

SS/01.06.2022 : 3P/7C