



W.P.(MD)No.6716 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.10.2022**

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

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and

W.M.P(MD)No.5282 of 2017

The General Manager,
Tamil Nadu State Transport Corporation,
Tirunelveli Limited,
Tirunelveli Division,
Vannarapettai, Tirunelveli.

... Petitioner

vs.

1. The Presiding Officer,
The Labour Court,
Tirunelveli.

2. S.Pandaram

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records from the 1st respondent Labour Court, Tirunelveli, relating to the impugned award passed by it in C.P.No. 116 of 2016 dated 12.01.2017 and quash the same.



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For Petitioner : Mr.Sathiya Singh
For R-1 : Labour Court
For R-2 : Mr.G.Prabhu Rajadurai

ORDER

This Writ Petition has been filed challenging the impugned order, dated 12.01.2017 passed by the 1st respondent/the Presiding Officer, Labour Court, Tirunelveli, in C.P.No.116 of 2016.

2. The brief facts as stated in the affidavit are that the 2nd respondent was an employee in the Petitioner Corporation has filed a Claim Petition before the 1st respondent herein/Labour Court, Tirunelveli, in C.P.No.116 of 2016, seeking over-time payment. The claim of the 2nd respondent is that he had worked over-time in the Petitioner's Corporation. As per Section 26 of the Motor Transport Act, 1961 the petitioner is entitled to over-time work at double the rate. Since the statutory payment was not paid and hence, he has raised Industrial Dispute before the 1st Respondent/Labour Court, Tirunelveli.



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3. The contention of the Petitioner/Corporation is that the issue was considered and the Corporation has entered 12(3) settlement, dated 06.02.2008. This issue was also raised in an earlier litigation, wherein, it had ended in writ appeal in W.A.(MD)No.851 of 2002 and this Court vide order, dated 25.07.2013 has stated that over-time work has to be settled as per 12(3) Settlement and not otherwise. The Labour Court, without considering the order passed by the Hon'ble Division Bench of this Court in the Writ Appeal, has passed an award directing the Petitioner/Corporation to pay the over-time payment at double the rate. Aggrieved over the said order, the Transport Corporation has filed this Writ Petition.

4. The contention of the petitioner is that the Labour Court without scrutinizing the records and without noticing the Order passed by the Hon'ble Division Bench of this Court, has simply passed an order and directed the petitioner to settle the over-time payment over and above the terms of agreement in 12(3) settlement and directed to pay the over payment at double the rate. Therefore, the Corporation prays to allow this Writ Petition.



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5. The 2nd respondent has filed counter affidavit and stated that the 2nd respondent along with 12 other employees have filed Claim Petitions before the Labour Court, claiming over-time wages in accordance with the provisions of law. The case was hotly contested and after elaborate arguments, the Labour Court has come to the conclusion and directed to pay the over-time amount. The said order was passed in accordance to law and there is no ground for interference. Hence, the 2nd respondent prays to dismiss this Writ Petition.

6. Heard Mr.Sathiya Singh, learned counsel appearing for the petitioner and Mr.G.Prabhu Rajadurai, learned counsel appearing for the 2nd respondent. Perused the material documents available on records.

7. It is seen from the records that the parties have entered 12(3) settlement. As per Section 26 of the ***Motor Transport Workers Act***, the petitioner corporation has to pay double the wages. As per Section 37 of the ***Motor Transport Workers Act***, it is stated that whichever is favourable to the Workmen that has been taken into account. The contention of the 2nd respondent is that the 12(3) settlement is not beneficial or favourable to the employee, moreover the



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12(3) settlement is in violation of Section 37 of the ***Motor Transport Workers Act***. For better understanding, Sections 26 & 37 of the ***Motor Transport Workers Act***, are extracted hereunder:

Section 26. Extra wages for overtime:

(1) Where an adult motor transport worker works for more than eight hours in any day in any case referred to in the first proviso to section 13 or where he is required to work on any day of rest under sub-section (2) of section 19, he shall be entitled to wages at the rate of twice his ordinary rate of wages in respect of the overtime work or the work done on the day of rest, as the case may be.

(2) Where an adult motor transport worker works for more than eight hours in any day in any case referred to in the second proviso to section 13, he shall be entitled to wages in respect of the overtime work at such rates as may be prescribed.

(3) Where an adolescent motor transport worker is required to work on any day of rest under sub-section (2) of section 19, he shall be entitled to wages at the rate of twice his ordinary rate of wages in respect of the work done on the day of rest.

(4). For the purposes of this section, “ordinary rate of wages” in relation to a motor transport worker means his basic wages plus dearness allowance.



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37. Effect of laws and agreements inconsistent with this Act -

(1). The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act.

Provided that where under any such award, agreement, contract of service or otherwise a motor transport worker is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the motor transport worker shall continue to be entitled to the more favourable benefits in respect of other matters under this Act.

(2). Nothing contained in this Act shall be construed as precluding any motor transport worker from entering into an agreement with an employer for granting him rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Act.

8. The 2nd respondent claims that the 12(3) settlement is not favourable to them and hence the Labour Court has passed an order to grant as per the provisions of the Act. But the said issue was considered in W.A. No.851



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of 2002 and the Hon'ble Division Bench, vide order, dated 25.07.2013 has directed to pay as 12(3) Settlement and the relevant portion is extracted here under:

“9.Since the appellant corporation and the first respondent trade union as well as other trade unions have entered into settlement under Section 12(3) of the Industrial Disputes Act, the Learned Counsel for the appellant submitted that the writ appeal may be disposed of in terms of the settlement.

10.In view of the above the writ appeal is disposed of in terms of settlement under section 12(3) of the Industrial Disputes Act”

9. Since the aforesaid order of the Division Bench was not brought to the notice of the Labour Court the impugned order came to be passed by the Labour Court. Therefore, this Court is directing the petitioner Corporation to pay the amount as per 12(3) Settlement within a period of four weeks from the date of receipt of copy of the Order.



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10. The 2nd respondent claims that 12(3) settlement is not in accordance with Rule 37 of the *Motor Transport Workers Act*. Therefore, liberty is granted to the 2nd respondent to raise Industrial Dispute before the Labour Court, challenging the 12(3) settlement. With these observations, this Writ Petition is allowed. No Costs. Consequently connected miscellaneous petition is also closed.

Index : Yes / No
Internet : Yes
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To

The Presiding Officer,
The Labour Court,
Tirunelveli.



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S.SRIMATHY, J

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Order made in
W.P.(MD)No.6716 of 2017

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