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W.P.No.22281 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.22281 of 2004 and
WPMP.No.26980 of 2004

The Tamilnadu State Transport Corporation
Kumbakonam Division Limited,
Railway Station New Road,
Kumbakonam, Rep. By its General Manager
Vs.

... Petitioner

- 1.The Presiding Officer,
Labour Corut, Cuddalore
- 2.Viswanathan
- 3.Govindaramaiyan
- 4.Srinivasan
- 5.Mariappan
- 6.Kannan
- 7.R.Jeevan
- 8.Muthukrishnan
- 9.Subramanian
- 10.Rajendran
- 11.Radhakrishnan
- 12.Swaminathan
- 13.Krishnamoorthy
- 14.Prakasam
- 15.Dhandapani
- 16.Krishnamoorthy

... Respondents

PRAYER : Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the



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records culminating in the passing of the Common order dated 25.02.2003 on the file of the first respondent Labour Court at Cuddalore, made in CP.Nos.408 to 420 & 422 and 423 of 1993, quash the same.

For Petitioner : Mr.M.Murali Vinodh

For Respondents
R1 : Court

For R2,8,13,14,
5,6,7,10,11&16 : No appearance

R3,4,9,12 & 15 : died (steps due)

ORDER

This writ petition has been filed challenging the common order passed in CP.Nos.408 to 420 & 422 and 423 of 1993 dated 25.02.2003 thereby directed the petitioner to pay salary for five leave days as per settlement arrived between them under Section 12(3) of Industrial Disputes Act dated 23.4.1977.

2. Heard, the learned counsel appearing for the petitioner. Though notice served on respondents 2 to 16 and their names have been printed in the cause list, on one appeared before this Court either in person or through pleader.



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3. The respondents were employed as Clerks / Junior Assistants and as such they were governed by the settlement dated 24.03.1977 under Section 12(3) of Industrial Disputes Act. They were employed in the workmen category and as such they were entitled to 14 days National and Festival holidays to 9 days per year as per settlement. In terms of which, the petitioner agreed to pay five days wages every year to all the workmen whose holidays were reduced from 14 days to 9 days. Subsequently, they were promoted as Junior Superintendents on various dates. They were ceased to be workmen within the meaning of Section 2(s) of the Industrial Disputes Act. Subsequently, they were granted only 9 National and Festival holidays and did not make any payment for five days. If at all any dispute over the said proposition, respondents 2 to 16 ought to have filed application under Section 2(k) of the Industrial Disputes Act in order to raise dispute. In stead of that, they filed petition under Section 33(c) (2) of the Industrial Disputes Act which is not permissible under law. When the said amount is disputed by the petitioner, it cannot be ordered without any adjudication by the Labour Court. The petition under Section 33(c)(2) of the Industrial Disputes Act



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is only in the nature of proceedings to compute the monetary reliefs based on a pre-existing right which is already in existence. If the right or entitlement is in dispute, it has to be adjudicated upon. The Labour Court has no jurisdiction to order any claim under Section 33 (c)(2) of the Industrial disputes Act.

4. Therefore, the order passed by the Labour Court cannot be sustained and it is liable to be set aside. Accordingly, the Common order dated 25.02.2003 on the file of the first respondent Labour Court at Cuddalore, made in CP.Nos.408 to 420 & 422 and 423 of 1993 is quashed and this writ petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

19.09.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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To

- 1.The Presiding Officer,
Labour Court, Cuddalore
- 2.The Government Advocate,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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