



WEB COPY



W.P.No.15131 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No.15131 of 2021

Pokkuvarathu Kazhaka Oyvu Petra
Aluvalar Nala Sangam, Kovai,
(Regd. No.269/2011),
Rep. by its Secretary,
K.S.Shanmuga Velayutham, B-25, Cheran Colony,
Thudiyalur Post, Coimbatore - 641 034.

...Petitioner

-Vs-

1.The Government of Tamil Nadu,
Rep. by its Chairman, State Transport Undertakings and
Additional Chief Secretary to Government,
Transport Department,
Secretariat, Chennai - 600 009.

2.M/s.Tamil Nadu State Transport Corporation Ltd.,
(Coimbatore Division),
Rep. by its Managing Director,
No.37, Mettu Palayam Road,
Coimbatore - 641 043.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Mandamus directing the second respondent to
settle the earned leave salary payment from the year 2008 to 2020 to the
eligible 103 members of the petitioner association belongs to the second



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respondent Corporation herein as per the membership list enclosed with 6% interest in the light of the orders passed by the Madurai Division Bench of this Court in W.A.(MD).Nos.793 to 810, 812 to 817, 820 to 825 and 828, 830 to 837 of 2019 dated 24.09.2019 W.P.(MD).NO.7071 of 2021 dated 29.03.2021, W.P.(MD).No.26487 of 2019 dated 13.12.2019, W.P.(MD).No.2449 of 2018 dated 02.04.2018, W.A.(MD).No.210 of 2019 dated 04.09.2019 and W.P.(MD).No.7325 of 2020 dated 06.07.2020.

For Petitioner : Mr.D.Soundar Raj
For Respondent 1 : Mrs.Jayanthi,
Additional Government Pleader
For Respondent 2 : Mr.L.S.M.Hasan Fizal,
Standing Counsel

ORDER

This writ petition has been filed for issuance of writ of mandamus directing the respondents to settle the earned leave salary payment from the 2008 to 2020 to the eligible 103 members of the petitioner Association with 6% interest in the light of the orders passed by the Madurai Bench of Madras High Court and the orders passed by the Madras High Court.

2. Heard Mr.Soundar Raj, learned counsel for the petitioner, Mrs.M.Jayanthi, learned Additional Government Pleader appearing for the



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first respondent and Mr.L.S.M.Hasan Fizal, learned Standing Counsel appearing for the second respondent and perused the material available on record.

3. With the consent of both side counsels, this writ petition is disposed of at the stage of admission.

4. The grievance of the petitioner is that after retirement of its members, the respondents have not settled the earned leave salary and therefore, the petitioner claims disbursement of the same to its members together with interest.

5. Learned counsel appearing for the petitioner and the respondents submitted that the issue involved in the present writ petition is covered by various orders of this Court including the order dated 13.12.2019 in the case of S.Alagesan vs. The Managing Director, Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., and another in W.P.(MD).No.26487 of 2019. The relevant portion of the order reads as follows:



"4.An identical issue came up for consideration before the Division Bench of this Court in W.A(MD).No.210 of 2019 and the Hon'ble Division Bench by judgment dated 04.09.2019 had upheld the view of the learned Single Judge against which the writ petition came to be filed and also rejected the Corporation plea that the employee had not claimed the encashment of the surrender leave within the stipulated time. The relevant portion of the said orders reads as follows:-

'2.This appeal is filed by the Tamil Nadu Transport Corporation, Kumbakonam Division. The respondent filed W.P(MD).No.2449 of 2018 praying for a Writ of Certiorarified Mandamus to quash the order dated 21.12.2017 and direct the appellants to settle the petitioner's surrender leave salary. The appellant Corporation resisted the claim by contending that even though as per the settlement entered into under Section 12(3) of the Industrial Dispute Act, the employee is entitled for surrendering and encashing 15 days in one year or 30 days in two years, the same has not been done by the writ petitioner during his service during 2011-2014 and after superannuation only in the year 2016, he has made a claim of surrender of earn leave, based on the circular issued by the



appellant Corporation, dated 09.01.2017. Further, it is submitted that the circular is not meant for enabling the retired employees to renew their claim of surrendering their earned leave of 15 days in a year during the service i.e., between 2011-2014 and it is applicable only for existing employees. Therefore, it is submitted that the respondent/writ petitioner cannot lay his claim based upon the circular, dated 09.01.2017.

3.The learned counsel appearing for the respondent/writ petitioner submitted that though the petitioner superannuated on 31.05.2016, from the year 2011 onwards, the said practice of surrendering 15 days or 50% of the earn leave per year was done away by the appellants Corporation on account of financial crises. Further, the action based on the settlement entered into under Section 12(3) of the Act was not available to the respondent/writ petitioner, because the appellants Transport Corporation is citing financial crisis. The learned Single Judge took into consideration the facts placed before him and also noted the circular dated 09.01.2017 and taking note of the fact that there is record to show that the appellants transport corporation pleaded financial crises for



non-settling the surrender leave salary, allowed the writ petition.

4.While doing so, the Writ Court referred to an earlier order in the case of A.Sundararajan Vs., Tamil Nadu State of Transport Corporation (Kumbakonam Limited) [W.P(MD).No.24245 of 2016 etc batch], wherein similar relief sought for has been granted and the writ petitions were allowed and the appellants Transport Corporation was directed to implement the same. Thus in our considered view, the learned Single Judge has rightly gone into the factual position and took note of stand of the appellants corporation as to why earlier they did not permit surrender and allowed the writ petition. Therefore, we find that the appellants have not made out any ground to interfere with the order passed by the learned Single Judge.'

5. In the light of the above, this Court is of the view that the petitioner would be entitled to claim salary for the surrendered leave."

6. By following the said order, the Madurai Bench of Madras High Court by its Order dated 29.03.2021 in W.P.MD.No.7071/2021, allowed the



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said writ petition with a direction to the respondents therein to settle the earned leave salary together with interest at the rate of 6% per annum from the date of retirement till the date of actual disbursement.

7. Learned standing counsel appearing for the second respondent relied an order of the Court dated 07.10.2021 in the case of ***A.Santhanamoorthi vs. The Principal Secretary, Transport Department and another.*** The relevant portion of the said order is reads as follows:

"3. It is noticed that though the above observation of the First Bench of the Madurai Bench of this Court was followed by a learned Single Judge in W.P.No.15886 of 2020 vide order dated 19.01.2021, the learned Single Judge has subsequently modified the views in W.P.No.506 of 2021 vide order dated 24.03.2021 considering the constraints of the State Finance due to the outbreak of Covid-19 with the following directions:-

“(i) Respondent/Transport Corporation is directed to pay interest @ 4% per annum to the Petitioner for the belated payment of gratuity, leave salary and communication of pension amount that are yet to be settled, in six equal monthly instalments, commencing 01.04.2021.



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(ii) In case of delay in making instalments within the time stipulated supra, with reference to the judgment of the Division Bench of this Court (supra), interest payable for the period of delay shall be at 6% per annum."

4. Considering the same, this Writ Petition is disposed by directing the respondents to consider the representation dated 06.09.2021 of the petitioner and to pay interest at the rate of 4% per annum for the belated payment of terminal benefits to the petitioner in respect of Gratuity, Leave Salary, Provident Fund and other legal dues to the petitioner in six equated monthly instalments commencing from 1st November, 2021. No costs."

8. In view of the aforesaid decisions, this Court is of the view that the members of the petitioner association herein are entitled for the relief sought in this writ petition together with interest at the rate of 4%.

9. In the result, this writ petition is **allowed** with the following directions:

(i) there shall be a direction of the respondents herein to settle the earned leave salary payment from the year 2008 to 2020 to the eligible



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103 members of the petitioner Association with interest at the rate of 4% per annum from the date of retirement till the date of actual disbursement.

(ii) the second respondent shall disburse the said amount to the members of the petitioner Association within a period of six weeks from today.

(iii) There shall be no order as to costs.

(iv) Consequently, connected miscellaneous petition is closed, if any.

23.06.2023

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Note: Issue order copy on 26.06.2023.

Index: Yes/No

Neutral Citation: Yes/No



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To
WEB COPY

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Additional Chief Secretary to Government,
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Rep. by its Managing Director,
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BATTU DEVANAND, J.

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