IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29/4/2024
Delivered on	8/7/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.6586 of 2020
a n d
W.M.P.No.7805 of 2020

The Management
Tamil Nadu Government Transport
Corporation (CBE) Ltd
37 Mettupalayam Road
Coimbatore 641 043. ... Petitioner

Vs

A. Vellingiri ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records in C.P.No.9 of 2016 on the file of the Principal Labour Court, Coimbatore, dated 6/8/2018.

For petitioner ... Mr.M.Arun
for Mr.A.Sundara Vadhanan

For respondent ... Mr.V.Ajay Khose

ORDER

This writ petition is filed seeking to issue a writ of certiorari to call for the records pertaining to C.P.No.9 of 2016 on the file of the Principal Labour Court, Coimbatore and quash the order dated 6/8/2018.

2. Facts in brief are as follows:-

The respondent has been working as a Conductor in the Tami Nadu Government Transport Corporation (Coimbatore) Limited, Ondipudur Branch. He is still working and due to retire on 30/6/2025. He has filed C.P.No.9 of 2016 on the file of Principal Labour Court, Coimbatore, claiming payment of money for surrender leave for a period of 30 days. The said C.P was contested by the petitioner corporation. The main issue raised by the petitioner Corporation in C.P.No.9 of 2016 is whether the surrender leave to be treated for working employees is entitled for interest in case of belated payments. C.P.No.9 of 2016 was disposed of by the labour Court holding that the respondent/Conductor is entitled for interest at the rate of 6% p.a., for belated payment of encashment of surrendering leave during the service. Aggrieved by the same, present writ petition is filed.

3. Heard Mr.M.Arun, learned counsel for the petitioner and Mr.V.Ajay Khose, learned counsel for the respondent.

4. It is submitted by the learned counsel for the petitioner that finding of the labour Court that respondent/Conductor is entitled for the benefit of interest for belated payment of surrender leave during the service is erroneous. It is submitted that they have no rules which mandates payment of such interest on the belated payments of surrender leave.

5. The learned counsel appearing for the petitioner Corporation has brought to the notice of this Court to a letter issued by the Tamil Nadu State Transport Corporation to all its Officers, dated 26/3/2018 stating that surrender leave salary should not be taken for calculation of interest and Rule 68 of CCS (Pension) Rules, 1972.

6. The learned counsel appearing for the respondent has cited the judgment of this Court in ***S.LOGANATHAN Vs. 1. TAMIL NADU STATE TRANSPORT CORPORATION (SALEM) LTD., rep. BY ITS MANAGING DIRECTOR, SALEM 7 AND ANOTHER (W.P.4849 of 2023 dated 29/2/2023),*** however, the judgment is not applicable to the

facts of this case, since it dealt with the payment of interest in respect of delay in settlement of retirement benefits.

7. No counter affidavit is filed by the respondent. Perused the materials available on record.

8. The respondent is working as a Conductor in the petitioner Corporation. The petitioner Corporation as a matter of policy, permitting the employees of the Corporation to surrender 15 days of E.L, within a period of one year and in case if an employee has not availed surrendering of E.L in any year, then the said employee will be permitted to surrender 30 days within a period of 2 years. The employees will have maximum 240 days of E.L to their credit. Normally, every year, the petitioner Corporation will be giving Notification or Circular inviting the applications from the employees to surrender E.L to each of the employees who is entitled to hold maximum to the extent of 240 days of E.L to their credit. This is because at the time of retirement, employee is having 240 days to his credit. The said 240 days can be surrendered after retirement and encashment can be done by the employee. Therefore, the employee will take a call as to whether he can apply for surrender of 15

days of E.L in a year or 30 days of surrender within a period of two years or not?

9. The labour Court has observed that the respondent was having 95.5 days of E.L to his credit until May 2014. He has surrendered 30 days of E.L in the month of June 2011 and claimed the amount and the petitioner Corporation stated to have adjusted 30 days of E.L surrendered by the petitioner in the month of June 2011, thereby, the respondent is left with 65.5 days of E.L in his account. Even though, the respondent has surrendered 30 days of E.L in the month of June 2011, he was not given credit of encashment of the said Earned Leave. The respondent has approached the petitioner several times. He has also submitted a letter to the petitioner Corporation but there was no response, thereby, he has filed C.P.No.9 of 2016 before the labour Court to compute 30 days of E.L surrender as Rs.16,179/- and also sought for a direction to the petitioner to pay the said amount.

10. The petitioner Corporation has contested the said C.P stating that the petitioner has surrendered 30 days of E.L in the month of June 2011 and that as per the calculation, the respondent is entitled only for

Rs.11,828/- towards 30 days of surrender E.L and not Rs.16,179/- as claimed by him. It is also the defence of the petitioner Corporation in the C.P that on account of financial situation of the petitioner Corporation, encashment of surrender leave is being settled seniority wise. The respondent in C.P sought for settlement of the encashment of E.L and also demanded to pay the interest at the rate of 24% p.a., on account of belated payments.

11. During the course of enquiry and by citing the orders of this Court in W.A.No.665 of 2018 and C.M.P.No.6352 of 2018, the labour Court has finally concluded that the respondent/Conductor is entitled for interest at the rate of 6% p.a., of Rs.11,828/- for belated disbursement of surrender of leave.

12. On going through the impugned order of the labour Court, it is clear that the labour Court mislead itself and arrived at an incorrect conclusion that the respondent is entitled for interest at the rate of 6% p.a. The very basis for the labour Court to arrive at such a conclusion is the order passed by this Court in W.A.No.665 of 2018 and C.M.P.No.6352 of 2018. For the sake of convenience, relevant portion of the order which

has become the basis for the labour Court to take a decision to grant interest is extracted hereunder:-

> "There will be a direction to the Managing Directors of the Tamil Nadu State Transport Corporations, to compute interest at the rate of 6% p.a., on the delayed disbursement/payment of retirement benefits including encashment/disbursement of surrendered leave salary to all those who have filed the writ petitions/contempt application, as well as others covered under the orders of this Court in C.M.P.No.6352 of 2018 in W.A.No.665 of 2018 dated 8/3/2018 and 28/4/2018 within two months from today. Interest has to be calculated as ordered above."

13. On a perusal of the above referred judgment of this appeal, it is clear that the petitioner Corporation was directed to pay interest for belated disbursement of the retirement benefits including encashment of surrender leave salary. However, this judgment is not applicable to the

facts of this case. The issue raised by the petitioner Corporation before the C.P is whether the Corporation is bound to pay the interest on belated payment of surrender of E.L during the course of service of the respondent.

14. It is the settled legal position that once an employee retires from the service, all his retirement benefits including the surrender leave will have to be paid without any delay. In case, if there is any delay, then the Corporation has to pay the interest on the belated payments. Therefore, since the issue involved in Writ Appeal was not in respect of whether or not to pay the interest on the belated payments of surrender of E.L of serving the employee, the judgment is not applicable.

15. Similarly, the labour Court has also in the final paragraph of the impugned order has directed the petitioner Corporation to pay interest at the rate of 6% p.a., to the respondent for delayed disbursement of surrendered leave salary and in fact, the issue before the labour Court was not in respect of surrendering of leave salary, but it is surrendering of E.L during the course of service.

16. Further, surrendering of leave 240 days or less than is a matter of right of the employees. The Corporation has no discretion at all either not to pay or delay in payment of encashment of surrender leave thereby, in case if there is any delay, Corporation is bound to pay with interest. However, in respect of the encashment of earned leave during the course is concerned, it is only a concession or facility given to the employee during the course of service. In most of the times, some Corporations, including the petitioner Corporation and at times, the Government also decide not to permit the employees to surrender their earned leave for some period during the course of service. This normally happens on account of financial issues of either Corporation or the Government. Therefore, as a matter of right, the respondent cannot demand that every year, surrender has to be done. Therefore, encashment of surrender during the course of service cannot be equated with surrender of encashment of leave at the time of retirement.

17. Further, in case of encashment of leave salary, after retirement, if there is any delay in payment, then as already observed, employee is

entitled for interest. The interest will normally be calculated from the date of retirement or after one month from the date of retirement until encashment was actually done. However, in case of surrendering of earned leave during the period of service of an employee is concerned, one cannot point out as to what was the cut off date to take him into consideration for payment of money. Certain times it so happens that Corporation accepts the surrender of earned leave of serving employee in Principal. However, encashment of the said will be created at a later date depending upon the financial conditions.

18. Further, the respondent has failed to place before the Court any rule or agreement with the Corporation to the effect that even the serving employees are entitled for interest in case if there is any delay in crediting the money for surrendering of earned leave. In view of the discussion made above, this Court is of the view that impugned order dated 6/8/2018 passed in C.P.No.9 of 2016 by the labour Court are perverse. Therefore, required to be interfered with.

19. In the result, writ petition is allowed in part and the order dated 6/8/2018 passed in Computation Petition No.9 of 2016 by the Principal

Labour Court, Coimbatore is set aside. Though the respondent is entitled for encashment of 30 days earned leave, respondent is not entitled for interest at the rate of 6% p.a., as directed. The petitioner Corporation is directed to credit Rs.11,828/- in the account of the respondent as early as possible towards surrender of 30 days earned leave, in case if not already paid.

No costs. Consequently, connected Miscellaneous Petition is closed.

8/7/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Principal Labour Court, Coimbatore.

Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
W.P.No.6586 of 2020

8/7/2024