



புதுச்சேரி மாநில அரசிதழ்

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பொருளடக்கம்

SOMMAIRES

CONTENTS

பக்கம்	Page	Page
தொழில் நீதிமன்றத் தீர்ப்புகள்.. 806	Sentence arbitral du Travail .. 806	Award of the Labour Court .. 806
அரசு அறிவிக்கைகள் .. 811	Notifications du Gouvernement .. 811	Government Notifications .. 811
பற்றுக்கை அறிவிப்பு .. 823	Avis de Saisis-arrêt .. 823	Notice of Attachment .. 823
ஒப்ப அறிவிப்புகள் .. 823	Avis d'Adjudications .. 823	Tender Notices .. 823
ஆபத்தான நிறுவனங்கள் .. 824	Etablissements Dangereux .. 824	Dangerous Establishments .. 824
சாற்றறிக்கைகள் .. 827	Annonces .. 827	Announcements .. 827

corporation to enforce section 26 of the Motor Transport Workers Act, 1961 and that despite of the above representation given before the Labour Department, the respondent did not come forward either to give any reply for the enforcement of MTW Act or to settle the issue and the same was pending long time for enquiry and in the mean time, the petitioner got retirement and gave a complaint on 04-04-2014 before the same Labour Officer (Conciliation), Labour Department, Puducherry and in that enquiry the respondent did not gave any reply and therefore, the conciliation ended in failure. The petitioner further stated that he has worked more than 8 hours and worked as overtime work as per Act and entitled for a sum of ₹ 2,46,414 and a sum of ₹ 2,43,223 towards weekly off duty worked days, a sum of ₹ 1,38,783 towards the Medical Leave Surrender Allowances before 01-09-1998 of his employment as per the SECT(TN) management order towards the pending salary proceedings order 79989/2/SETC/1999 dated 09-06-1999, a sum of ₹ 16,267 towards the Earned Leave Surrender salary after his retirement, a sum of ₹ 31,510 towards the Social Welfare Fund amount and the respondent has not come forward to pay the above sums even at the time of his retirement and also not paid a sum of ₹ 600 towards the arrears of the salary for the period of November, 2010 as per the Pay Settlement and moreover a sum of ₹ 313 has been illegally recovered by the respondent and the petitioner is entitled for the above sum as per the LT. No. 1499/P2/SETC(TN)/Pdy, dated 02-08-2011 and that a sum of ₹ 262 has been illegally deducted from his salary in the month of June, 2011 and that the respondent marked as 'A'(absent) in his weekly off on 27-01-2011 and deducted a sum of ₹ 786 from his salary which the petitioner is entitled to receive from the respondent and as per proceeding No. 694/P2/SETC/Pdy/08, dated 12-03-2008, the petitioner is entitled for 7 days duty joining time and instead of which he was allowed only one day and marked 6 days earned leave without the permission and consent of the petitioner and therefore, the respondent is liable to allow the enjoy duty join time of 7 days and that the respondent has taken revenge on the petitioner because he was fighting for his legal cause and the respondent did not come forward to give any promotion as Checking Inspector and promoted one B.Narayanan, Conductor, EDP3282 who is a junior to the petitioner in the service and pay, the said Narayanan belongs to ADMK Trade Union and the petitioner belongs to CITU Trade

Union and the management has moved indifferently and partially with bias nature as against the petitioner which are against the Labour Laws and Constitution, if, the petitioner ought to have been promoted to the Checking Inspector, he would have received more salary and pension amount gratuity would have been increased, that the respondent had purposely and wantonly taken this view and also paid low amount towards the retirement benefit amount and he has filed a complaint before the Hon'ble District Consumer Redressal Forum at Puducherry in C.C. No. 39/2013 and the respondent paid only the part principal P.F. amount and the matter is pending before the said Authority for the further payment and interest amount for P.F which the petitioner is legally entitled too, that because of the attitude of the respondent, the petitioner suffers a lot in all walks of his life and the petitioner is also entitled to receive interest @ 18% p.a from the respondent from 01-08-2012 as the respondent had neglected to pay the eligible sum to the petitioner and also denied the basic legal right of the petitioner and disobeyed the order of Hon'ble High Court Judicature at Madras in Writ Petition No. 2132 and 2133/1958, dated 09-12-1993. Hence, the petitioner prays this Court to pass a order by directing the respondent to pay the sum claimed by the petition as per the Annexure appended with the claims of sum of ₹ 6,78,157 with interest 18% p.a from 01-08-2012 with the back wages if, the petitioner would have promoted as Checking Inspector and got more salary and pension on par with the promotion made to Mr. B. Narayanan, Conductor, 3282 by fixing the promotion also and separate calculation has been made in Annexure for a sum of ₹ 3,00,000 and cost.

3. The brief averments in the counter filed by the respondent are as follows :

The respondent denied all the allegations contained in the claim statement of the petitioner and it is contended that the Head of Office at Chennai has appointed the petitioner and as per terms and conditions of the petitioner and the management, only Chennai alone is the competent jurisdiction to adjudicate the issue and further stated that the bus operating is only for the welfare of the people and furthermore, the corporation itself is under severe financial crunch and the corporation cannot act beyond the statutory norms as stipulated in the Act and that the petitioner, who was worker at the relevant caused several problems

to the corporation and there are several charges/complaints against him and further the petitioner does not possess sufficient qualification for the promotion and the said Narayanan has completed degree and as per statutory rules and seniority, the promotion was given to him. Hence, the respondent prays this Court to dismiss the petition.

4. In the course of enquiry on the side of the petitioner PW1 was examined and Ex.P1 to Ex.P29 were marked and on the side of the respondent RW1 was examined and Ex.R1 to Ex.R6 were marked. Both sides are heard. Records are perused. On both sides written arguments were filed and the same were carefully considered.

5. *The point for consideration is:*

Whether the dispute raised by the petitioner against the respondent management over non-payment of overtime wages, weekly holiday wages from the period 1994 to 2012 and retirement benefits is justified or not and if justified, what is the relief entitled to the petitioner?

6. In order to prove his case the petitioner has examined himself as PW1 and he has reiterated the petition averments in his evidence that he joined as a Bus Conductor on 21-02-1981 in the respondent Transport Corporation, and he got retirement on 31-07-2012 at Puducherry Branch and that the petitioner was not allowed to enjoy the benefit of overtime wages at twice the rate of ordinary wages as per section 26(1) and (3) of the Motor Transport Workers Act and that the respondent has paid only 1 ½ time overtime wages and later it was fixed as ₹ 75 for one hour without any basis and that the respondent management completely neglected to pay the overtime wages as per the Act and the respondent management has also not paid the wages for the days in which the petitioner was working in weekly holidays and the respondent management also has not paid the retirement benefits *i.e.*, the Medical Leave Surrender allowances and arrears of the salary for the period of November, 2010 as per the Pay Settlement and the amount which was illegally recovered by the respondent management to the tune of ₹ 313 and a sum of ₹ 262 has been illegally deducted from his salary in the month of June 2011 and Social Welfare Fund amount of ₹ 31,510 and the said amount were not paid by the management though the petitioner has made a requisition to pay the same.

7. In support of his oral evidence the petitioner has exhibited Ex.P1 to Ex.P29. Ex.P1 is the copy of the Judgment, dated 09-12-1993 in Writ Petition No. 2132/1995 of the Hon'ble High Court Judicature at

Madras wherein, it has been held that in addition to the compensatory holidays the workers are entitled for wages as per S.26 of the Act. Ex.P2 is the original order in PW Case No. 2/1997 which would reveal the fact that the petitioner has filed a petition before the Labour Commissioner Authority under the payment of wages Act wherein, the Authority of the payment of wages has passed an order that the provision under section 1(6) of the Payment of Wages Act the authority under the Payment of Wages Act has no jurisdiction to try over this case for final disposal. Ex.P3 is the original letter No. 465/55393/PIO/RTI/2011, dated 06-03-2012 which would reveal the fact that the respondent management has paid the overtime wages at the rate of ₹ 75 per hour on the expectations of the representatives of the union in the respondent corporation. Ex.P4 is the attested copy of Circular Memo No. 260/E8/SETC/07, dated 11-09-2009 which states that the drivers who are working on weekly holidays would be paid ₹ 179 and the Conductors would be paid ₹ 178 as remuneration and the Branch Offices were permitted to pay the same who have availed weekly holidays. Ex.P5 is the copy of the complaint No. 692/LO(e)/AIL-IV-2000 given to the Labour Officer (Enforcement) on 21-08-2000. Ex.P6 is the copy of the registration certificate issued by the Labour Department. Ex.P7 is the copy of the complaint No.1375/LO(e)AIL-I/2013 given to the Labour Officer (Enforcement) on 13-06-2013 regarding non-payment of wages. Ex.P8 are the original proceedings No. 107/P2/TTC/92, dated 28-03-1992 and Original Memo No. 694/P2/SETC(TN)/Pdy/08, dated 12-03-2008 which would evident that the petitioner was relieved from Puducherry and transferred to Salem on 28-03-1992 and the petitioner was asked to join the transferred post on 02-04-1992.

8. Further, the document Ex.P9 is the original proceedings No. 1016/S2/TTC/92, dated 10-08-1993 which would evident that the petitioner was transferred to Puducherry from Salem on 10-08-1993 with a direction to report before the Puducherry office. Ex.P10 is the original proceedings No. 1882/P2/TTC/97, dated 06-03-1997, dated 06-03-1997 which would evident that overtime wages has been fixed by the respondent corporation. Ex.P11 is the copy of the pay settlement pending 2010 November. Ex.P12 to Ex.P27 are original salary slips of the petitioner from the year 1997 to 2012 which would go to show that the respondent corporation has issued salary slip to the petitioner wherein, the total working days, casual leave availed by the petitioner and compensatory off taken by the petitioner are mentioned. Ex.P28 is the copy of

the reply given by the Information Officer, SETC, Chennai on 31-05-2013 which would evident that the respondent corporation has not paid an amount of ₹ 31,510 towards social welfare fund. Ex.P29 is the copy of the proceeding, dated 09-06-1999 which would evident that the respondent corporation has permitted the workers to surrender medical leave while they are retiring from service.

9. The main contention of the respondent corporation is that this Tribunal has no jurisdiction to adjudicate this issue since the petitioner was appointed only at Chennai and as per terms and conditions of the petitioner and the management, Chennai alone is the competent jurisdiction to adjudicate the issue and that the bus operating is only for the welfare of the people and the corporation itself is under severe financial crunch and the corporation cannot act beyond the statutory norms as stipulated in the Act.

10. In support of their contention the respondent has examined RW1 and marked Ex.R1 to Ex.R6. It is the evidence of RW1 that the petitioner was appointed only at Chennai and as per the terms and conditions, the Tribunal at Chennai is having jurisdiction to adjudicate the issue and this Tribunal is not having competent jurisdiction to decide the issue and that the petitioner has caused several problems to the respondent corporation and there are several charges and complaints against him and the petitioner does not possess sufficient qualification for the promotion and RW1 has denied all the allegations stated in the claim statement. In support of their contention the respondent corporation has exhibited Ex.R1 to Ex.R6. Ex.R1 is the copy of final settlement of P.F. with enclosed cheque, dated 27-07-2015. Ex.R2 is the copy of letter relating to CSR issued by SETC (HR Section), dated 08-09-2017. Ex.R3 is the letter regarding Medical leave and Earned leave, dated 06-09-2017. Ex.R4 is the letter relating to salary certificate enclosed with salary slip November, 2011 and June, 2011, dated 06-09-2017. Ex.R5 is the letter regarding settlement towards Social Welfare fund, dated 06-09-2017. Ex.R6 is the letter regarding parawar request, dated 19-07-2017.

11. The documents exhibited by the respondent would go to show that the respondent corporation has settled the EPF amount of the petitioner through IOB cheque for ₹ 5,14,058 on 20-07-2015 and the requisition of the petitioner to promote as Checking Inspector was negativated and intimated to the petitioner on 08-09-2017, after his retirement and the

Branch Manager of the respondent transport corporation has received intimation from the Head Office of respondent transport corporation that the petitioner has surrendered 135 days of medical leave and also surrendered 11 days of earned leave and he has permitted to receive ₹ 1,28,626 towards the same and it is also intimated to the Branch Manager by the Head Office that no salary has been deducted from the salary of the petitioner as stated by the petitioner and it was stated by the Head Office to the Branch Manager that whenever, the joining instruction is given to the worker who have been transferred from District to District the joining time is only upto 5 days and within District it is only 3 days and no joining time will be given in the transfer on request.

12. The first contention of the respondent corporation is that this Tribunal has no jurisdiction to adjudicate the dispute raised by the petitioner since he was working under Tamil Nadu Transport Corporation, the respondent herein and the said corporation is having Head Office at Chennai and the petitioner was also appointed at Chennai. It is not in dispute that the petitioner was working at Puducherry Branch of the respondent transport corporation and while he was working at Puducherry he has raised the industrial dispute and the same was referred by the Government to this Tribunal and that therefore, this Tribunal has jurisdiction to adjudicate the dispute as the cause of action for the dispute arose at Puducherry and hence, the contention raised by the respondent corporation that this Tribunal has no jurisdiction to adjudicate the above industrial dispute is not sustainable and the said contention is also untenable.

13. The second contention of the respondent corporation is that the petitioner is not entitled for over time wages at twice the rate of ordinary wages as per Motor Transport Workers Act and he is also not entitled for weekly holiday wages for the period from 1994 to 2012 and other retirement benefits. The petitioner has claimed that he is entitled for twice the rate of regular wages for the overtime work. It is evident from Ex.P4 the letter issued by the respondent corporation on 11-09-2009 that the respondent corporation itself has sent a circular to the Branch Managers directing to pay ₹ 178 to the Conductors who are working at weekly holidays and doing overtime work. The petitioner has exhibited the Judgement of the Hon'ble High Court of Madras under Ex.P1 from which it is clear that motor transport workers are entitled for extra wages as per Act apart from the compensatory holiday if, they worked in the rest days

to prevent the dislocation of bus service and though the worker has taken compensatory holiday that will not disable the worker from seeking extra wages as per sec.26 of the Act and it is also clear from the observation of the Hon'ble High Court of Madras in Judgement under Ex.P1 that if, the motor transport worker is required to work on any day of rest under sub-sec.(2) of sec.19, he shall be entitled for wages at the rate of twice his ordinary rate of wages in respect of the work done on the day of rest. From the above observation it is clear that if, motor transport worker is working overtime he would be entitled for twice the wage as claimed by the petitioner.

14. The section 26 of the Motor Transport Workers Act is referred which runs as follows :

“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 provision 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 sub-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.”

From the above provision it is clear that the transport workers are entitled for twice the rate of regular wages whenever they done overtime. In this case, it is not disputed by the respondent management that they have paid only ₹ 75 per hour as overtime wages and earlier it was paid only one and half time of rate of regular wages instead of twice the regular wage and therefore, the respondent corporation has to pay the over time wages at the rate of twice the regular wages and that therefore, it is to be held that the industrial dispute raised by the petitioner against the

respondent management over non-payment of overtime wages, weekly holiday wages for the period from 1994 to 2012 and retirement benefits is justified. However, the petitioner has claimed overtime wages for the period from January 1984 to 2012 and in support of his claim the petitioner has filed the annexure for calculating the overtime wages while the reference is only to decide the overtime wages for the period from 1994 to 2012 and furthermore, the annexure filed by the petitioner for claiming the overtime wages as well weekly holiday wages is not supported by any documentary evidence and that therefore, this Tribunal cannot pass an Award in favour of the petitioner as claimed in the claim petition to the tune of ₹ 6,78,157 since the calculation was not supported by any documentary evidence.

15. In the result, the petition is allowed and the industrial dispute raised by the petitioner against the respondent management over non-payment of overtime wages, weekly holiday wages for the period from 1994 to 2012 and retirement benefits is justified and Award is passed directing the respondent corporation to pay overtime wages at the rate of twice the regular wages to the petitioner after deducting the amount if any, already paid to him as overtime wages and also directed the respondent management to pay weekly holiday wages for the period from 1994 to 2012 along with retirement benefits if any. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 13th day of March, 2018.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner's witness:

PW1 —28-04-2016 Chellappan

List of petitioner's exhibits:

Ex.P1 —09-12-1993 Copy of the Judgment in Writ Petition Nos. 2132/1995 of the Hon'ble High Court Judicature at Madras.

Ex.P2 — Original order in PW Case No. 2/1997.

Ex.P3 —06-03-2012 Original letter No. 465/55393/PIO/RTI/2011.

Ex.P4 —11-09-2009 Attested copy of Circular Memo No. 260/E8/SETC/07.

Ex.P5 —21-08-2000 Copy of the complaint No. 692/LO(e)/AIL-IV-2000 given to the Labour Officer (Enforcement).

Ex.P6 — Copy of the registration certificate issued by the Labour Department.

Ex.P7 —13-06-2013 Copy of the complaint No. 1375/LO(e)AIL-I/2013 given to the Labour Officer (Enforcement).

Ex.P8 —28-03-1992 Original proceedings No. 107/P2/TTC/92.
12-03-2008 Original Memo No. 694/P2/SETC(TN)/Pdy.

Ex.P9 —10-08-1993 Original proceedings No. 1016/S2/TTC/92.

Ex.P10—06-03-1997 Original proceedings No. 1882/P2/TTC/97.

Ex.P11 — Copy of the pay settlement pending 2010 November.

Ex.P12— 1997 Original salary slips of the petitioner (10 Nos.).

Ex.P13— 1998 Original salary slips of the petitioner (12 Nos.).

Ex.P14— 1999 Original salary slips of the petitioner (12 Nos.).

Ex.P15— 2000 Original salary slips of the petitioner (12 Nos.).

Ex.P16— 2001 Original salary slips of the petitioner (12 Nos.).

Ex.P17— 2002 Original salary slips of the petitioner (11 Nos.).

Ex.P18— 2003 Original salary slips of the petitioner (12 Nos.).

Ex.P19— 2004 Original salary slips of the petitioner (11 Nos.).

Ex.P20— 2005 Original salary slips of the petitioner (10 Nos.).

Ex.P21— 2006 Original salary slips of the petitioner (12 Nos.).

Ex.P22— 2007 Original salary slips of the petitioner (11 Nos.).

Ex.P23— 2008 Original salary slips of the petitioner (12 Nos.).

Ex.P24— 2009 Original salary slips of the petitioner (12 Nos.).

Ex.P25— 2010 Original salary slips of the petitioner (12 Nos.).

Ex.P26— 2011 Original salary slips of the petitioner (12 Nos.).

Ex.P27— 2012 Original salary slips of the petitioner (5 Nos.).

Ex.P28—31-05-2013 Copy of the reply given by the Information Officer, SETC, Chennai.

Ex.P29—09-06-1999 Copy of the proceeding.

List of respondent's witness:

RW1 —22-09-2017 C. Jayakumar

List of respondent's exhibits:

Ex.R1 —27-07-2015 Copy of final settlement of P.F. with enclosed cheque.

Ex.R2 —08-09-2017 Copy of letter relating to CSR issued by SETC (HR Section).

Ex.R3 —06-09-2017 Letter regarding Medical leave and Earned leave.

Ex.R4 —06-09-2017 Letter relating to salary certificate enclosed with salary slip November, 2011 and June, 2011.

Ex.R5 —06-09-2017 Letter regarding settlement towards Social Welfare fund.

Ex.R6 —19-07-2017 Letter regarding parawar request.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY

HOME DEPARTMENT

(G.O. Ms. No. 29, Puducherry, dated 13th June 2018)

NOTIFICATION

Under rule 7 (2) (a) of the Pondicherry Police Service Rules 2003, the Lieutenant Governor, Puducherry, is pleased to appoint the following officers on regular basis in the Entry Grade of Puducherry Police Service with effect from 17-5-2018 onwards as per the recommendations of the Departmental Promotion Committee held on 17-5-2018:-