

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 28TH DAY OF NOVEMBER, 2019

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.2463 OF 2015 (S-KSRTC)

BETWEEN:

G.M.Poovaiah,
S/o Late G.K.Madaiah,
Aged about 54 years,
R/a Rangasamudra,
Somvarpet Taluk,
Kodagu District.

... Petitioner

(By Sri.M.C.Basavaraju, Advocate)

AND:

1. The Managing Director,
KSRTC, Central Offices,
K.H.Road, Shanthi Nagar,
Bengaluru - 560 027.

2. The Divisional Controller,
KSRTC,
Bangalore Central Division,
K.H. Road, Shanti Nagar,
Bengaluru - 560 027.

3. The Chief Accounts Officer,
And Administrative Officer,
KSRTC, Central Offices,
K.H.Road, Shantinagar,
Bengaluru - 560 027.

... Respondents

(By Smt. H.R.Renuka, Advocate)

This writ petition is filed under Articles 226 & 227 of the Constitution of India praying to quash the impugned endorsement dated 27.11.2014 issued by the R-2 vide Annexure - D to the W.P. and the impugned circular/letter dated 10.05.2011 issued by the R-3 vide Annexure - E to the writ petition and etc.

This writ petition coming on for **Preliminary Hearing in 'B' group**, this day, the court made the following:

ORDER

The short grievance of the petitioner, a poor driver in the respondent- KSRTC relates to denial of allowances admissible for the over time job done by him.

2. After service of notice, the respondent – KSRTC, having entered appearance through its learned Sr. Panel Counsel resist the writ petition banking upon a circular dated 10.05.2011, a copy whereof is at Annexure – E which reads as under:

“ಅಧಿಕ ಅವಧಿ ಭತ್ಯೆ (ಎಸ್‌ಟಿ/ಎನ್‌ಎಸ್‌ಟಿ) ಹೆಚ್ಚುವರಿ ವೇತನ, ಪ್ರಯಾಣ ಭತ್ಯೆ, ಸವೇತನ ರಜೆ ಭತ್ಯೆ ಇವುಗಳು ಉದ್ಯೋಗಿಗಳ ಅಸ್ಥಿರ (Variable) ಹಾಗೂ ನಿರ್ದಿಷ್ಟಪಡಿಸದ (Unspecified) ಗಳಿಕೆಯಾಗುವುದರಿಂದ ವ್ಯತ್ಯಾಸದ ಪಾವತಿ ವ್ಯಾಖ್ಯಾನದ ವ್ಯಾಪ್ತಿಯಲ್ಲಿ ಬರುವುದಿಲ್ಲ. ಸಂಬಂಧಿಸಿದವರೆಲ್ಲರೂ ಈ ಬಗ್ಗೆ ಸೂಕ್ತ ಕ್ರಮ ಜರುಗಿಸುವಂತೆ ತಿಳಿಸಲಾಗಿದೆ.”

3. Having heard the learned counsel for the parties and having perused the petition papers, relief needs to be granted to the petitioner for the following reasons:-

a) it is not in dispute that the petitioner during the relevant period had put in over time service in the onerous job of driving; his claim for the grant of over time allowance is rejected quoting the aforesaid Circular, which does not have

force of law, nor justification; a legal claim of an employee cannot be negated by quoting such a Circular;

(b) the right of an employee to the monetary gains of over time service has proprietary character; withholding the amount payable therefor amounts to acquiring property sans compensation; therefore, the same is violative of Article 300-A of the Constitution of India;

(c) extracting services from an employee without paying the remuneration therefor amounts to begar prohibited under Article 23 of the Constitution of India; the Apex Court in the case of State of Gujarat Vs. Hon'ble High Court of Gujarat 1998 7 SCS 392 has recognized even the right of sentence serving prisoners to wages for the work done in the prison; that being the Nation's Jurisprudence, denial of over time allowance falls foul of Article 23; and,

(d) the impugned Circular has a strange reason for denying the over time allowance, namely, the same is variable depending upon over time work done by the employee; what is lost sight of by the respondent – Management is that, the amount payable for the over time job, is ascertainable and therefore, the variability spoken of by the Circular offends law reason & logic.

In the above circumstances, this writ petition succeeds; the impugned Circular and the order are quashed; the respondent is mandamus to consider and grant the allowance to the petitioner within a period of eight weeks.

If delay in obeying the mandamus is brooked, first respondent shall be liable to pay a sum of Rs.20,000/- to the petitioner in addition to amount payable as allowance and that the same may be recovered from the erring officials.

Now, no costs.

**Sd/-
JUDGE**

MH/-/Bsv