

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal Nos.1352/2015, 1035/2015, 292/2016 and 293/2016
& M.P.Nos.1 of 2015 in W.A.Nos.1352 & 1035/2015 and
CMP Nos.4642 and 4643 of 2016 in
W.A.Nos.292 and 293 of 2016

W.A.No.1352/2015:

1. The Government of Tamilnadu
rep.by its Secretary to Government
Environment and Forest Department
Secretariat, Chennai 9
2. The Managing Director
Tamilnadu Tea Plantation Corporation Limited
Regd.Office, TANTEA Complex
Coonoor, The Nilgiris
3. The Divisional Manager
Tamilnadu Tea Plantation Corporation Limited
Ryan Tea Division, Periyakallar (PO)
Vallparai Taluk
Coimbatore District 642 106

....Appellants

Vs.

P.Gurusami

...Respondent

W.A.No.1035 of 2015:

1. The Government of Tamilnadu
rep.by its Secretary
Environment and Forest Department
Secretariat, Chennai 9
2. The Managing Director
Tamilnadu Tea Plantation Corporation Limited
Coonoor, The Nilgiris

.. Appellants

Vs.

- 1 V.Parthasarathy
- 2 S.Gibson Dharmaraj
- 3 S.Latchumanan
- 4 O.T.Raman
- 5 M.Bojan
- 6 M.Gillan
- 7 S.L.Sivan Pillai

8 T.Bojan
9 T.Chandran
10 M.J.Raveendran
11 D.Sivaji
12 A.Kumaresan
13 H.Muniver Khan
14 S.Manoharan
15 C.Govindarajan
16 A.Nachimuthu
17 N.Joghee
18 M.Soundra Pandian
19 R.Sivaprakasam
20 H.Antony D Cruz
21 R.Philips Francis
22 R.Krishnan
23 K.Durairaj

.. Respondents

W.A.No.292 of 2016:

1. The Government of Tamilnadu
rep.by its Secretary
Environment and Forest Department
Secretariat, Chennai 9
2. The Managing Director
Tamilnadu Tea Plantation Corporation Limited
Regd.Office, TANTEA Complex
Coonoor 643 101
The Nilgiris

.. Appellants

Vs.

1 K.Gopal
2 K.Jayaraman
3 V.K.Velayuthan
4 T.Subramaniam
5 M.Chellappan
6 A.Francis
7 R.Nanjan
8 K.Kanapathy
9 K.Natarajan
10 M.Gnanaraj
11 A.Jerome Antony
12 I.Ligorian
13 V.Veeraputhran
14 A.Francis
15 K.Shakaravarthi
16 R.Mohamed ali
17 D.Samuel Devaraj

.. Respondents

W.A.No.293 of 2016:

1. The Government of Tamilnadu
rep.by its Secretary
Environment and Forest Department
Secretariat, Chennai 9

2. The Managing Director
Tamilnadu Tea Plantation Corporation Limited
Regd.Office, TANTEA Complex
Coonoor 643 101
The Nilgiris

.. Appellants

Vs

1 S.Radhakrishnan
2. ENR Vijayashekar
3. V.Yoganathan

.. Respondents

Prayer in W.A.No.1035/2015: Writ Appeal filed against the order dated 18.6.2015 made in W.P.No.17297 of 2015.

Prayer in W.A.No.1352/2015: Writ Appeal filed against the order dated 20.3.2015 made in W.P.No.7423 of 2014.

Prayer in W.A.No.292/2016: Writ Appeal filed against the order dated 22.7.2015 made in W.P.No.21932 of 2015.

Prayer in W.A.No.293/2016: Writ Appeal filed against the order dated 29.7.2015 made in W.P.No.22884 of 2015.

WA.NO.1352/2015 in WP.No.7423/2014:Writ Petition filed under Article 226 of the Constitution of India praying on the Writ of Certiorarified Mandamus calling for the Records relating to the impugned order Ref. No.E-2/18025/2014 dated 7.1.2014 passed by the 2nd rspondent and quash the same as null and void and consequently direct the 2nd respondent to issue 50% of unearned leave on private affairs on retirement of the petitioner on the basis of resolution dated 27.6.2008 passed by the Board of Directors of TANTEA.

WA.No.1035/2015 in WP.No.17297/2015:Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus to Direct the second respondent to issue the remaining service benefit of 50% unearned leave on private affairs on retirement (based on the Resolution dated 27.6.2008 of the Board of Directors of TANTEA) and freezed Dearness Allowance of their service period on par with the Government Orders with effect from 1.1.2000 to 1.7.2014

WA.NO.292/2014 & WA.NO.293/2016 in WP.22884/2015
WP.21932/2015:

Petitions under Article 226 of the Constitution of India praying the issuance of a Writ of Mandamus Directing the Second Respondent to issue remaining service benefit of 50% unearned leave on private affairs on retirement (based on the resolution dated 27.06.2008 of the Board of Directors of TANTEA)

For Appellants

in all Writ Appeals: Mr.P.H.Aravind Pandian
Additional Advocate General
assisted by Mr.N.Inbanathan,
Government Advocate

For respondents : Mr.P.Gurusami- party-in-person
appeared in W.A.No.1352/2015

Mr.G.Sundaram
for R1 to R23 in W.A.No.1035/2015
for R1 to R17 in W.A.No.292/2016
for R1 to R3 in W.A.No.293/2016

COMMON JUDGMENT

(Judgment of the Court was made by HULUVADI G. RAMESH,J.)

These set of appeals have been filed against the order of the learned Single Judge in directing the 2nd appellant-Managing Director-Tamil Nadu Tea Plantation Corporation Ltd., Coonoor, Nilgiris, to permit the 1st respondent(s)/employees to encash 50% of the unearned leave on private affairs, standing on their credit.

2. In W.P.7423 of 2014, the Writ Petitioner viz., P.Gurusami, sought to quash the order dated 07.01.2014 passed by the 2nd respondent-Managing Director, TANTEA, and to direct the said respondent to issue 50% of unearned leave on private affairs on retirement of the petitioner, on the basis of resolution dated 27 June 2008 passed by the Board of Directors of TANTEA.

3. It appears that by proceedings dated 07.01.2014, the second appellant/second respondent informed the Writ Petitioner/employee that there is no question of encashment of 50% of the salary by surrendering unearned leave in view of the absence of a provision in the Staff Service Rules framed by Tamil Nadu Tea Plantation Limited (hereinafter referred to as "TANTEA").

4. Insofar as other Writ Appeals are concerned, the 1st respondent(s) are all employees of the second appellant Corporation, which is owned by the Tamil Nadu Government. All the 1st respondent(s)/employees retired from service after rendering very long years of service. The petitioners therein approached this court praying for a direction to the second respondent to issue the remaining service benefit of 50% unearned leave on private affairs on retirement.

5. The learned Single Judge, on those Writ Petitions viz., W.P.No.21932 of 2015, W.P.No.17297 of 2015 and W.P.No.22884 of 2015, by orders dated 22.07.2015, 18.06.2015 and 29.07.2015 respectively, by following the order dated 20.03.2015 passed in W.P.No.7423 of 2014, issued a direction to the second respondent to grant encashment of Unearned Leave on Private Affairs upto 90 days to the petitioners, if the said leave is available to their credit.

6. Aggrieved by the said direction passed by the learned Single Judge, the appellants/State has filed the above Writ Appeals.

7. The learned Single Judge, in the order dated 20.03.2015 in W.P.No.7423 of 2014, held that the Government have issued an order in G.O.Ms.No.488, Finance (Pension) Department, dated 12 August 1996 extending the benefit of encashment of 50% unearned leave on private affairs to the employees of Government. Subsequently, the Government in its letter dated 28 January 2008 made it clear that the scheme for encashment of unearned leave on private affairs ordered in G.O.Ms.No.488, Finance (Pension) Department, dated 12 August 1996 for Government servants may also be extended to the employees of all Statutory Boards and State Public Sector Undertakings. Since the Petitioner is an employee of State Public Sector Undertakings, he is eligible for encashment of 50% of the unearned leave on private affairs. The learned Single Judge, further observed that the Government vide letter dated 28 January 2008 called upon the Chief Executive Officers of State Public Sector Undertaking to place before the Board of Directors for extending the benefits to the employees of State Public Sector Undertakings. The Board of Directors of TANTEA at its meeting held on 27 June 2008 resolved to extend the benefits of unearned leave on private affairs with effect from the date of Government letter dated 28 January 2008 and to amend the Staff Service Rules accordingly. The second respondent pursuant to the resolution dated 27 June 2008 submitted a request to the Government to extend the benefits to all its employees. The second respondent made a further request to approve the proposed amendment to TANTEA Staff Service Rules for the purpose of encashment of 50% of unearned leave on private affairs. The

learned Single Judge pointed out that the representation made by the petitioner on 19 December 2013 for the purpose of payment of 50% of the salary by saving unearned leave on private affairs, was rejected only on the ground that there is no provision in the Service Rules to grant unearned leave on private affairs. Further, the learned Single Judge pointed out that the second respondent is a Public Owned Corporation and the G.O.Ms.No.488, Finance (Pension) Department dated 12 August 1996 would apply even to the employees of statutory Boards and State Public Sector Undertakings and the second respondent has taken a conscious decision to extend the benefits of encashment of 50% of the unearned leave on private affairs to its employees and hence, the approval of the Government is technical in nature.

8. It is relevant to note that the Single Judge was of the view that the matter is now seized of by the Government and the Rules have not been amended, cannot be a reason to deny the petitioner of the benefits conferred on him pursuant to the Government Order in G.O.Ms.No.488, Finance (Pension) Department, dated 12 August 1996. On such findings, the learned Single Judge set aside the impugned order of rejection of the representation of the Writ Petitioner dated 7 January 2014 and further directed the second respondent to permit the petitioner to encash 50% of the unearned leave on private affairs, standing on his credit.

9. The learned Additional Advocate General appearing for the State submits that rules of the Corporation are not so far been amended for unearned leave on private affairs and its encashment. He further submits that extending the benefit of encashment of 50% of unearned leave on private affairs to employees could only be granted in cases where the entity/Unit is running in profit, but, in case of TANTEA Board is concerned, the total financial burden payable to the employees is more than Rupees One Crore and if it is allowed to encash by the 1st respondent(s)/employees, the financial status of the TANTEA Board, which is already running in loss is not at all possible. He further submits that as such, the Government has given instructions in letter dated 28.01.2008 to the TANTEA Board that financial commitment should be made only through internal mode of the State Public Sector Undertaking and not seek financial assistance from the Government for the scheme of encashment of 50% of unearned leave on private affairs and as such, a decision has been taken by the Government, not to approve the scheme for encashment of unearned leave on private affairs to the employees of all statutory boards and in turn, the Staff Service Rules of TANTEA was not amended in respect of sanction of unearned leave on private affairs.

10. The 1st respondent in W.A.No.1352 of 2015 viz., P.Gurusami, Party-in-Person, appearing before this court

submitted that the G.O.Ms.No.488, Finance (Pension) Department dated 12.08.1996 is clear and it would apply even to the employees of the statutory Boards and State Public Sector Undertakings. He also contended that as observed by the learned Single Judge the second appellant/Tamil Nadu Tea Plantation Corporation has also taken a conscious decision to extend the benefits of encashment of 50% of the unearned leave on private affairs to its employees.

11. The 1st respondent, Party-in-Person has vehemently argued that in furtherance of the G.O.Ms.No.488, Finance (Pension) Department dated 12.08.1996, suitable amendment ought to have been carried out in the service rules of the 2nd appellant-Board, but, just because the matter had already been seized of by the Government and is still pending, does not necessarily mean that there is no such statutory force available with the 2nd appellant-Board for extending such benefit to its employees. He further contended that the order of the learned Single Judge does not suffer from any illegality or irregularity and accordingly, sought for dismissal of the Writ Appeals and to confirm the order of the learned Single Judge.

12. We have gone through the G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996, resolution passed by the second respondent dated 27.06.2008, letter dated 28.01.2008 and 02.03.2009 issued by the Government.

13. The 1st respondent(s) shown to be retired employees of Tamil Nadu Tea Plantation Corporation Ltd., The Government, of course, in their letter dated 02.03.2009, has formed the opinion that in the existing Service Rules of the Tamil Nadu Tea Plantation Corporation Limited, there is no provision for sanction of Unearned Leave on Private Affairs; the encashment can be allowed only when there is provision in the Service Rules for availing the leave; hence, introduction of a new scheme of leave encashment is not advisable and therefore to state that the proposal for encashment of Unearned Leave on Private Affairs is not feasible of compliance.

14. As noted in the preceding paragraphs, the learned Single Judge, having taken note of the fact that the Government made it clear in its letter dated 28.01.2008, that G.O.Ms.No.488, Finance (Pension) Department dated 12.08.1996 may also be extended to the employees of all Statutory Boards and State Public Sector Undertakings, directed the second respondent to permit the employees to encash 50% of the unearned leave on private affairs, standing on their credit and further directed to complete the exercise within eight weeks.

15. We would like to refer to the Letter No.31310/Fin (BPE) Depart/2011 dated 15.02.2012 of the Principal Secretary to Government addressed to the Chief Executive Officers of State Public Sector Undertakings/Statutory Boards, wherein, it is stated that though the State Public Sector Undertakings/Statutory Boards are implementing the scheme of encashment of Earned Leave to their employees subject to the maximum of 240 days, the Government have not extended the benefit of encashment of Unearned Leave on Private Affairs to the employees of State Public Sector Undertakings/Statutory Boards as in the case of Government Employees with reference to G.O.Ms.No.488/Finance (Pension) Department dated 12.08.1996. The Principal Secretary to Government further issued the following directions :-

"(i) only those Statutory Boards/State Public Sector Undertakings whose Service Regulations/Service Rules provide for extension of this scheme may continue to sanction the benefit of encashment of Unearned Leave on Private Affairs to their employees at the time of their retirement from the date of the orders issued in Govt.Lr.No.37568/BPE/2006 dated 28.01.2008 without seeking financial assistance from Government.

(ii) those Statutory Boards/State Public Sector Undertakings whose Service Regulations/Service Rules do not contain provision for availing of Unearned leave on Private Affairs, this scheme should not be extended to its employees. Further, this scheme should not be introduced as a new benefit."

16. The Principal Secretary formed the opinion that the Public Sector Undertakings shall allow such benefit of encashment of unearned leave on private affairs by referring to G.O.Ms.No.488, dated 12.08.1996. What is to be noted herein is that the Government scheme of encashment of Earned Leave to their employees was subject to the maximum of 240 days, but when that benefit is not available to 2nd appellant-Board, the proposal was given by the second appellant to extend the benefit of encashment of unearned leave for 90 days to its employees. In the circumstances, the Government in its letter dated 28.01.2008 made it clear that the scheme for encashment of unearned leave on private affairs ordered in G.O.Ms.No.488, Finance (Pension) Department, dated 12 August 1996 for Government servants may also be extended to the employees of all Statutory Boards and State Public Sector Undertakings.

17. In the circumstances, just because there is no provision in the Service Rules of the 2nd appellant-Board to grant unearned leave on private affairs and that the Government had not taken any Policy decision yet in the matter in view of the financial burden and the Board is running in loss and the very same provision not included in the Standing Order or bye-law of the 2nd appellant-Board, it does not necessarily mean that the claim of the employees for such benefit has to be rejected outrightly.

18. As far as the contention of the learned Additional Advocate General in respect of financial burden and the Board is running in loss etc., are concerned, we are of the considered view that mere financial burden could not be taken into consideration while extending the benefit to the employees, which is already in existence in case of other Governmental entities. It is nothing but a very discrimination among the employees working in different organisations of the Governmental Body. The rejection of the claim of the employees solely based on the point of the Board running in loss on the ground that some Governmental Entities running in profit only could grant the benefits stated in G.O.Ms.No.488 dated 12.08.1996 and the other Corporations/Boards, which is running in loss cannot be extended with the said benefit cannot be sustained at all since the said decision is nothing but causing a discrimination among the employees, which will create a lack of motivation among the employees which would result in the employees not thriving to make it as a Profit running Board, particularly, when the undertaking is in loss. Further, in our considered view, the extension of benefit of G.O.Ms.No.488, Finance (Pension) Department dated 12.08.1996, would be a motivating factor for running the Undertaking in Profit and as such, the appellants herein shall take earnest steps to extend the benefit of encashment of 50% of the unearned leave on private affairs, standing on the credit of employees and incorporate the same in the Rules/Bye-Laws of the Board. Even otherwise, in the present context, pursuant to the G.O.Ms.No.488, Finance (Pension) Department dated 12.08.1996, since the Government had already incorporated such a provision, it is an admitted position that such a provision is prevailing. The above said G.O., enures to the benefit of employees of Government and as such, the said G.O., cannot be denied in respect of 1st respondent(s) in the present Writ Appeals, just because, they are working in 2nd appellant-Board.

19. In the circumstances, the above Writ Appeals are disposed of with a direction to the appellants herein, to consider the case of the 1st respondent(s)/ employees for extension of the benefit of encashment of 50% of the salary of the unearned leave for 3 months (90 days), by taking into account, the observations made in this order and implement the

order of the learned Single Judge, within 2 months from the date of receipt of a copy of this order.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nvsri
To

1. The Government of Tamilnadu
rep.by its Secretary to Government
Environment and Forest Department
Secretariat, Chennai 9
 2. The Managing Director
Tamilnadu Tea Plantation Corporation Limited
Regd.Office, TANTEA Complex
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 3. The Divisional Manager
Tamilnadu Tea Plantation Corporation Limited
Ryan Tea Division, Periyakallar (PO)
Vallparai Taluk
Coimbatore District 642 106
- +1 cc to M/s.P.Gurusami party in person sr.36643
+40 ccs to M/s.G.Sundaram Advocate sr.36640 & 36641
+1 cc to Special Government Pleader sr.36527

सत्यमेव जयते W.A.Nos.1352/2015, 1035/2015,
292/2016 and 293/2016

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