IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.11.2016

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.20994 and 20995 of 2008
and
M.P.Nos.1,1 and 2,2 of 2008

K.V.Neelakantan
..Petitioner in W.P.No.20994 of 2008

Pallom Baalaiah
..Petitioner in W.P.No.20995 of 2008

/vs/

1.The Special Commissioner and
Secretary to Government,
Transport Department,
Fort St.Geroge,
Chennai - 600 009.

2.The Governing Council,
Institute of Road Transport,
Taramani,
Chennai - 600 113.

3.Institute of Road Transport,
rep. by its Director,
Taramani,
Chennai - 600 113. ..Respondents in both W.Ps

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari to call for the records of the 3rd respondent in Proc.No.2532/IRT/2002, dated 24.01.2005 and quash so far as paragraph No.2 and 3 withdrawing the encashment of sick leave with retrospective effect from 01.09.1998 and deleting Sub Rule (f) of Rule 4 under Chapter 3 (leave rules) of the Service Rules of Institute of Road Transport and direct the respondents to sanction the encashment of Medical Leave accumulated till 01.09.1998.

For Petitioner in both W.Ps :Mr.L.G.Sahadevan
For Respondent in both W.P :Mr.P.Sanjay Gandhi for R1
Mrs.Lita Srinivasan for R2 and R3

COMMON ORDER

Since both the writ petitions are for the similar relief against the respondents by challenging the very same impugned order, these two writ petitions are decided by this common order.

2. The petitioners were originally working as Assistant Engineers in Highways Department. Thereafter, by deputation, they joined in the 3rd respondent institute viz., Institute of Road Transport on 01.07.1980 as Senior Technical Assistant. Thereafter, they were absorbed by the 3rd respondent institute from 01.07.1990 itself. While they were working, the service conditions, especially, pertaining to the leave was governed by the service rules of the 3rd respondent, according to which, sick leave made available to the employees of the 3rd respondent institute can even be encashed. The relevant portion of the said rules reads as follows.

> In the case of an employee retiring or passing away or resigning or removed or discharged or dismissed during the Course of an year, the entire sick leave (including the S.L. credited to his leave account in advance at the commencement of the year) available to his credit at the time- of his retirement or death or resignation or removal or discharge or dismissal shall be allowed to be encashed as per the rules.--
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3. These facilities had been enjoyed by the employees of the 3rd respondent/Institute of Road Transport, including the petitioners. By the impugned order dated 24.01.2005 passed by the 3rd respondent, sick leave was increased from 12 days to 18 days per year. Further, the encashment facility of sick leave at the time of retirement is withdrawn with retrospective effect from 01.09.1998. Since, the employees/petitioners had been working all along prior to the date of impugned order i.e., 24.01.2005 and all these earned leave saved by them between 01.09.1998 and 24.01.2005 cannot be encashed by them, they have filed these writ petitions challenging the impugned order.

4. Heard both sides.

5. The learned counsel appearing for the petitioners would contend that the petitioners had joined the service by deputation at the 3rd respondent institute on 01.07.1980 and from that date onwards, the petitioners have been absorbed permanently. Based on the sick leave rule, which was in effect from 01.07.1980, all the employees including the petitioners had the facility of saving the sick leave for the purpose of encashment at the time of retirement or even before on death or

otherwise. Such a facility which had been extended to the employees for those who had saved the sick leave on legitimate expectation of encashing the same at the time of superannuation, cannot be suddenly taken away by the 3rd respondent through the impugned order retrospectively. Though the 3rd respondent institution is empowered to make rules for their employees, no rule shall be made against the interest of the employees to whom the benefit has already accrued. Therefore, the impugned order is liable to be quashed.

6. Per contra, the learned counsel appearing for the 3rd respondent/Institute of Road Transport would contend that the 3rd respondent/Institute of Road Transport is registered under the Societies Registration Act, which was established for the purpose of training and education of the transport staff dealing with the public undertaking Transport Corporation in the State of Tamil Nadu. All the members of the 3rd respondent Institute are headed by the Secretary to Government, Transport Department of Government of Tamil Nadu. There is no direct fund generated for the third respondent and the third respondent is surviving only because of the contribution made by the members/Transport Corporations. When that being so, in the interest of employees and also considering the interest and financial position of the third respondent, in its general council meeting, an issue of encashing the sick leave was placed and after due consideration, the decision was taken on 27.12.2004, by which, it was decided to increase the sick leave from 12 days to 18 days with effect from 01.09.1998 and also it was decided to withdraw the benefit of encashment of sick leave at the time of retirement with retrospective effect from 01.09.1998.

7. The learned counsel for the respondents would further contend that the encashment of sick leave though was originally in practice, the Government of Tamil Nadu in the year 1994, issued a Government Order in G.O.Ms.No.157, Personnel and Administrative Reforms (FR.III-2) Department, dated 24.06.1994, whereby these facilities have been modified and according to the said Government Order, in respect of existing incumbents, the earned leave shall be worked out at 1/11th or 1/22nd of duty period, as the case may be, upto 30.06.1994 and the balance number of days shall lapse. The said order was directed to take effect from 1st July 1994.

8. Since, most of the employees working in the 3rd respondent are the erstwhile employees of the Transport Corporations during the year 1999, pursuant to clause 15 of the 12 (3) Settlement reached between the employees and the Government/Transport Corporations for all the permanent employees of the 21 State Transport Corporations, the Government issued G.O.Ms.No.163, State Transport Department, dated

21.05.1999. Based on the said Government Order option was given to the employees to encash the medical leave and ultimately, on the basis of the majority of the employees, the sick leave available to the credit of employees as on 31.08.1998 was permitted to be allowed for carrying over in their earned leave account under the new leave scheme.

9. Pursuant to the Government Orders, by which, encashment facility of earned leave/medical leave and encashment of number of sick leave etc., have been regularised for the State Government Employees as well as Transport Corporation Employees, in pursuance of resolution No.9 of 73rd Governing Council meeting held on 27.12.2004, the following modifications were made in the sick leave rules of Institute of Road Transport and its wings. The sick leave is increased from 12 days to 18 days per year w.e.f 01.09.1998. The encashment of sick leave at the time of retirement is withdrawn with retrospective effect from 01.09.1998. Resultantly, the facility was in force till 31.08.1998 for those who saved the sick leave and encashed the same. Only from 01.09.1998, the facility was taken away and the sick leave of 12 days was increased to 18 days retrospectively from 01.09.1998. Therefore, in view of the facility of enhancement of number of sick leave from 12 to 18 days retrospectively, there is no loss to the employees including the petitioners, because of the retrospective withdrawal of the facility of enhancement of sick leave from 01.09.1998. Therefore, the learned counsel for the third respondent would contend that, the impugned order has not taken away any rights conferred on the petitioners and the impugned order has not been issued against the interest of the employees including the petitioners and therefore, the impugned order is sustainable.

10. According to the sick leave rules, the facility of sick leave was available to all employees by which, an employee at the time of retirement can encash the accrued sick leave of his account and the sick leave can be accumulated without any limit as per the said rules.

11. Subsequently in respect of the State Government employees and in respect of the Transport Corporation employees, Government Orders were passed in G.O.Ms.No.157, dated 24.06.1994 and in G.O.Ms.No.163, dated 21.05.1999 taking away such facility of enhancement of sick leave.

12. Insofar as the petitioners are concerned, they were permanent employees of the third respondent institute and for

whom the rules for sick leave applicable to them is only the rules which were extracted above at least from 01.09.1998 till the impugned order is passed. Therefore, all these employees of the third respondent are under the legitimate expectation of utilising the facility of encashment of sick leave at the time of retirement, would have saved number of sick leaves and when that being so, all of a sudden, such accumulation facility or right has been taken away now by the respondents, especially, the third respondent by the impugned order dated 24.01.2005 with retrospective effect from 01.09.1998.

13. If at all, in the same line of the State Government and Transport Corporation decisions pertaining to their employees as reflected in the said Government Orders, if any decision the third respondent wants to take and implement the same on their employees, the third respondent has got such right to do the same. However, such a decision can be implemented only prospectively not retrospectively. In the cases in hand, the rights of the employees accrued on 01.09.1998 and was available till 24.01.2005 have been taken away without any notice, discussion or deliberation with the employees as they are affected persons. Therefore, these decisions said to have been taken during the Governing Council meeting of the third respondent held on 27.12.2004, cannot be given effect to retrospectively from 01.09.1998. If at all, the said decisions has to be given effect to the same could be done only from any subsequent date that may be fixed by the third respondent. At any rate, the rights accrued or available from 01.09.1998 till 24.01.2005, the date on which the impugned order was passed i.e, the accrued right of encashing the sick leave by the employees of the third respondent, cannot be taken away by the third respondent. Therefore in view of the same, the impugned order giving retrospective effect for clause (2) i.e withdrawing the facility of encashment of sick leave at the time of retirement with retrospective effect from 01.09.1998, is wholly unsustainable and therefore the said portion of the impugned order is liable to be quashed.

14. In the result, the impugned order dated 24.01.2005 passed by the third respondent, insofar as clause (2) of the said order, in respect of the petitioners alone, is quashed and the writ petitions are allowed.

15. The petitioners shall be entitled to encash the sick leave accrued in their account earned between 01.09.1998 and 24.01.2005. The amount payable by encashing the accrued sick

leave between the said period be paid by the third respondent to the petitioners, within a period of eight weeks from the date of receipt of a copy of this order. With these above directions and observations, the writ petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

To
1. The Special Commissioner and
Secretary to Government,
Transport Department,
Fort St.Geroge,
Chennai - 600 009.

2. The Governing Council,
Institute of Road Transport,
Taramani,
Chennai - 600 113.

3. The Director
Institute of Road Transport,
Taramani,
Chennai - 600 113.

+2 Ccs to Mr. L.G. Sahadevan, Advocate, sr 67658,67318
+2 Ccs to Mrs.Lita Srinivasan, Advocate sr 67342,67343

W.P.Nos.20994 and 20995 of 2008

GJ(CO)
sp/28/3