

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

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THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.30076 of 2016 and

WMP.No.26062 of 2016

V.Mahalingam

... Petitioner

vs.

1. The State of Tamil Nadu
rep. by its Secretary,
Public Works Department,
Fort St. George, Chennai-9.

2. The Engineer-in-Chief (Buildings) and
Chief Engineer (Buildings),
Chennai Region and
Chief Engineer (General),
Public Works Department,
Chepauk, Chennai-5.

... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 2nd respondent herein vide his proceedings in Letter No.CII(3)/2003/2006-181 dated 20.02.2014 and quash the same as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice and thereby direct the respondents to disburse the earned leave encashment for 330 days (240+90) days to the petitioner with interest at the rate of 18% p.a. from the date of termination of the extended service on 03.12.2013.

For Petitioner : Mr.A.R.Suresh

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader

ORDER

Challenging the impugned order passed by the 2nd respondent herein vide his proceedings in Letter No.CII(3)/2003/2006-181 dated 20.02.2014 and to quash the same and also for consequential direction, directing the respondents to disburse the earned leave encashment for 330 days (240+90) days to the petitioner with interest at the rate of 18% p.a. from the date of termination of the extended service on 03.12.2013, the petitioner has filed the present Writ Petition.

2. The case of the petitioner is as follows:

(a) The petitioner was initially appointed as Works Assistant and Technical Assistant on 23.07.1970 and thereafter, promoted as Junior Engineer on 21.04.1980 and subsequently promoted as Assistant Engineer on 23.12.1982 and further promoted as Assistant Executive Engineer on 31.01.2000. The petitioner had attained the age of superannuation on 31.05.2006. However, he was placed under suspension on 30.05.2006 and also not permitted to retire vide proceedings dated 30.05.2006 on the ground that a disciplinary proceedings was initiated on the same day and a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules had been issued to him on the same day. Immediately on 20.06.2006, the petitioner had submitted his explanation denying all the charges.

(b) On the same set of allegations, another charge memo was issued against the then Superintending Engineer one Mr.S.Ayyannan, who had reached the age of superannuation on 31.03.2006 and he was also placed under suspension and not permitted to retire on 30.03.2006. He had also submitted his explanation denying the charges. Accordingly, one Mr.P.Mahalingam, the then Chief Engineer, Chennai Region, PWD, was appointed as Enquiry Officer to enquire into the charges levelled against both of them vide G.O.(D) No.354, Public Works (E1) Department, dated 17.08.2006. The Enquiry Officer conducted enquiry on 18.10.2006 and on 15.11.2006. Since no final orders have been passed, the petitioner filed a Writ Petition in W.P.No.26265 of 2011 for the issuance of Writ of Mandamus, directing the 1st respondent to pass final orders on the disciplinary proceedings and the same was disposed of by this Court by order dated 15.11.2011, directing the respondents to serve the Enquiry Officer's Report dated 15.11.2011 to the petitioner within a period of two weeks and thereafter the petitioner was directed to submit his reply to the Enquiry Officer's Report.

(c) Pursuant to the order of this Court, the 1st respondent vide his letter dated 09.12.2011 furnished a copy of the Enquiry

Officer's Report in and by which all the five charges were held to be proved by the Enquiry Officer and thereby calling for the petitioner's reply for the said findings. The petitioner submitted a detailed representation dated 28.12.2011 denying all the charges and the findings of the Enquiry Officer. After a lapse of two years from the said detailed representation i.e. on 03.12.2013, without even giving him a second show cause notice on the proposed punishment, the 1st respondent had imposed a capital punishment of 'Removal from Service' vide G.O.(D) No.508, Public Works (E1) Department, dated 03.12.2013.

(d) While so, independent of the charge memo issued against the petitioner, after about one year of his suspension, identical charge memorandum was issued against some of the officers who were working at the relevant point of time vide Charge Memo dated 24.07.2007. The 1st respondent issued G.O. (D) No.571, Public Works (E1) Department dated 21.11.2008 appointing the Commissioner of Disciplinary Proceedings, Chennai as the Inquiry Officer to inquire into the charges framed against them. In that, there is no mention about the petitioner and nothing was found against him and the Commissioner has fixed the liability and responsibility against some other officers while exonerating some of the officers from the charges vide his report dated 28.03.2014.

(e) A criminal case was registered against the petitioner and some other officials against whom separate charge memo was issued in Crime No.4/2007 on the file of CB.CID, Thiruvannamalai, for offences under Sections 109, 409, 167-A, 477-A, 420 and 120-B read with 13(i) and 13(ii) of the Prevention of the Corruption Act and charge sheet has been laid and the same was taken on file as Special C.C.No.8/2011 and the said case was ended in acquittal of all the officers vide judgment dated 27.04.2016 and the petitioner has been exonerated of the criminal charges.

(f) After the acquittal in the criminal case on 27.04.2016 and after the exoneration of certain officers by the Commissioner of Disciplinary Proceedings vide his report dated 28.03.2014, the petitioner made a detailed representation to the Hon'ble Chief Minister's Cell to set aside the order of removal from service and thereby permit him to retire with all consequential monetary and service benefits on 02.06.2016. But, his representation was rejected by the 1st respondent. Thereafter, the petitioner made a representation dated 03.02.2014 requesting to pass necessary orders for the encashment of his leave salary earned during his service period and the same was also rejected by the 2nd respondent by proceedings dated 20.02.2014. Hence, the present Writ Petition.

3. Learned Counsel for the petitioner would submit that the petitioner is entitled for encashment of leave salary for 330 days (240+90) days with interest at the rate of 18% p.a. from the date of termination of the extended service on 03.12.2013. In this

regard, the learned Counsel for the petitioner would rely on a decision of this Court in **T.Veeravinothan vs. Registrar of Co-operative Societies, Kilpauk, Chennai and others reported in 2016-I-LLJ-730 (Mad)** wherein it is held as follows:

'9. Apart from Paragraph No.12, the following passage in Paragraph No.10 of the said judgment is also relevant to extract hereunder:

'... The Court in that case was concerned with the leave encashment. Finding that there was no rule permitting the Government to withhold the benefit of leave encashment, the Court held that it could not be withheld. Reason given was that leave encashment partakes the character of salary, which is a property and, thus with holding thereof in the absence of statute would mean depriving a person of his property without statute or law which would be violative of Article 300A of the Constitution of India. This is so stated in the following terms:

'2.5. Before we go into the legal sanctity of the circular, it must be remembered that the Leave Encashment is paid on account of unutilized leave and therefore, it partakes the character of salary. Pension is no longer considered as a bounty. The salary is a property given to the hands of the State which cannot be withheld except under the powers derived by a statute or law as contemplated under Article 300 A of the Constitution of India as laid down by the Supreme Court in MANU/SC/0046/1988: AIR 1988 SC 1407 (State of U.P. v. Haji Ismail Noor) and MANU/SC/0325/2003 : (2003) 3 SCR 779 (K.S.R.T.C v. K.O. Varghese)

....

13. In my considered view, the said by law cannot be interpreted to mean that in the case of dismissal, Earned Leave Encashment benefit could not be given.

14. If such a view is taken, no employee could accumulate his Earned Leave to his credit which will go against the interest of the employer also.

15. On the other hand, if an employee has chosen to accumulate his earned leave to his credit, the encashment of the same cannot be deprived on the dismissal, since his earned leave to his credit is nothing but his property as held by the Full Bench of the Punjab and Haryana High Court."

4. Heard the learned Special Government Pleader appearing

for the respondents and no counter has been filed.

5. Considering the facts and circumstances of the case and also considering the decision of this Court in **T.Veeravinothan vs. Registrar of Co-operative Societies, Kilpauk, Chennai and others reported in 2016-I-LLJ-730 (Mad)**, this Court is of the view that even though the petitioner was removed from the service, he is entitled for encashment of his earned leave. Hence, the impugned order passed by the 2nd respondent herein vide his proceedings in Letter No.CII(3)/2003/2006-181 dated 20.02.2014 is quashed and the respondents are directed to disburse the earned leave encashment for 330 days as claimed by the petitioner.

6. The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is also closed.

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Sd/-
Assistant Registrar (CS-)

/TRUE COPY/

Sub-Assistant Registrar

To

1. The Secretary,
State of Tamil Nadu,
Public Works Department,
Fort St. George, Chennai-9.
2. The Engineer-in-Chief (Buildings) and
Chief Engineer (Buildings),
Chennai Region and
Chief Engineer (General),
Public Works Department,
Chepauk, Chennai-5.

+1 CC Mr.A.R.Suresh Advocate SR.No.69385

+1 CC Government Pleader SR.No.70086

W.P.No.30076 of 2016

SSI [CO]

MSI 03/01/2017