



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.12.2016
CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
W.P.(MD)No.20542 of 2013

WEB COPY

G.Thavasi Appan

... Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Limited,
Bye-Pass Road,
Madurai - 625 016.

... Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent to pay the encashment of unearned leave on private affairs for period of 90 days to the petitioner.

For Petitioner	:Mr.C.Thangamani
For Respondent	:Mr.A.Jeyaraman

O R D E R

The prayer in the writ petition is for a Writ of Mandamus, directing the respondent to pay the encashment of unearned leave on private affairs for a period of 90 days to the petitioner.

2.The petitioner after having a long service at the respondent Corporation retired on 31.01.2008. Since he is entitled to get encashment of unearned leave on private affairs to the extent of 90 days, he had sent a representation to the respondent on 14.02.2013. Since the same has not been considered, the petitioner has come up with present writ petition.

3.Heard both sides.

4.The learned counsel for the petitioner submits that the Government by letter No.37568/BPE/2006, dated 28.01.2008, had considered the issue of encashment of unearned leave on private affairs at paragraph Nos.3 and 4. In the said Government letter it was quoted as follows:

"3.The Government after careful examination of this issue in the present context issue the following directions:-

<https://hcservices.ecourts.gov.in/hcservices/>

"The scheme of encashment of Unearned Leave on Private Affairs ordered in G.O.Ms.No.488. Finance (Pension)



Department Dated 12.08.1996 for Government Servants may also be extended to the employees of all Statutory Boards and State Public Sector Undertakings who are getting Government Scales of Pay, but not to the employees who are governed by periodic wage settlement under Industrial Dispute Act, subject to the condition that the concerned Board / State Public Sector Undertakings should not seek financial assistance from the Government for this purpose."

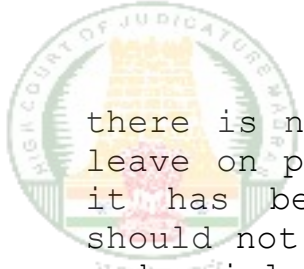
4. These instructions will take effect from the date of issue of orders."

Subsequent to the said Government Letter, the respondent Transport Corporation and other similar Corporations had a joint meeting on 24.06.2011 as to fix the modalities for implementing the said scheme for permitting the employees/ Officers to encash the unearned leave. In this regard a letter was written by the respondent to the Government on 09.09.2011, which reads thus:

"The Government have issued directions, vide letter first cited to implement the encashment of leave on private affairs to the Manager Cadre officers after getting necessary approval from Board. Accordingly, this subject has been placed before Board and the Board has resolved to implement this benefit to all the eligible cadre officers. As no modalities are framed in this regard, the matter has been discussed in the all Personnel manager's meeting held at Tirunelveli on 24/06/2011 to carry out uniform application in all STU's. We are awaiting for the minutes and on receipt of the same, necessary action will be taken to implement the said benefit to the eligible officers."

In the counter affidavit filed by the respondent at paragraph No.6, they have stated that pursuant to the 213th meeting of the Board of Directors of Tamil Nadu State Transport Corporation (Madurai) Ltd., Madurai held on 25.03.2010, it was resolved to implement the said scheme to all eligible officers. Even though such a resolution was passed to implement the scheme because of the financial crisis the respondent Corporation was not in a position to implement the same and once the financial position improves certainly they would implement the same. In view of the said Government letter and the decision taken by the respondent Corporation in their Board Meeting to implement the scheme, the petitioner would be entitled to get the benefits of encashment of unearned leave on private affairs and therefore, wants the writ petition to be allowed.

5. Per contra, the learned Standing Counsel for the respondent, relying upon the Government Letter No.17106/D2/2016, dated 25.11.2016, has submitted that since no provision in the Service Rules for encashment of unearned leave on private affairs,



there is no scope of permitting the petitioner to encash unearned leave on private affairs and in the said letter of the Government it has been strictly directed that the Transport Corporation should not deviate from the said instructions and if any deviation and violation of the said instructions by sanctioning of encashment of unearned leave on private affairs at the date of retirement, that shall be rectified and action would be taken against the officials sanctioning encashment of unearned leave on private affairs. In view of the categorical directions issued by the State Government in the letter dated 25.11.2016, the learned Standing Counsel for the respondent would submit that the petitioner is not entitled to encash unearned leave on private affairs and therefore the claim of the petitioner cannot be accepted.

6.This Court has considered the respective submissions of the learned counsel appearing for the parties.

7.A similar issue came to be considered by a reasoned order made in W.P.(MD) No.13711 of 2012, dated 07.11.2016, in the matter of R.Alagarsamy v. The State of Tamil Nadu rep. by its Secretary, Transport Department and others, wherein a learned Judge of this Court after having considered the rival submissions in the said writ petition has passed the following orders:

"4.It is an admitted position that the encashment of unearned leave on private affairs shall be disbursed to the employees. Even though the petitioner had retired from service on 31.05.2010 and the resolution was passed as early as on 25.03.2010 extending the benefit to the employees of the respondent corporation, till date the benefit due to the petitioner has not been disbursed. Therefore, this Court is of the view that it is a fit case to direct the respondents to disburse the retirement benefit of encashment of unearned leave on private affairs to the petitioner within a period of eight weeks from the date of receipt of a copy of this order."

8.In view of the said order, which has been recently passed, I am of the view that the issue raised by the petitioner herein is covered by the said order, as admittedly no intra-Court appeal has been filed as against the said order as has been submitted by the learned Standing Counsel for respondent, there can be no deviation or different view in respect of the petitioner, as the petitioner is similarly placed as that of the petitioner in that writ petition.

9.Accordingly, the Writ Petition is allowed. Consequently, the respondent is directed to extend the benefit of encashment of unearned leave on private affairs to the petitioner and disburse the benefit of encashment of unearned leave on private affairs to



the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Deputy Registrar()

/True Copy/

Sub Assistant Registrar

To
The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Limited,
Bye-Pass Road,
Madurai - 625 016.

+1cc to Mr.C.Thangamani, Advocate Sr.No.80672

W.P. (MD) No.20542 of 2013
14.12.2016

sj
rum/27.12.2016/4p/3c