

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 30104 of 2011
and
M.P. Nos. 1 & 2 of 2011

T. Ramu

(P-1 is amended as per
order dated 12/04/2017
in W.P.No.30104/11 and
M.P.Nos.1 & 2 of 2011)

... Petitioner

Vs.

1. The Principal Secretary to Govt.,
Environment & Forests Dept.,
Secretariat, Chennai-9.

2. The Secretary to Govt.,
Finance (BPE) Department,
Secretariat,
Chennai-9.

3. The Tamil Nadu Plantation
Corporation Ltd.,
(TAF CORN), Karur Road
Mallachipuram
Kambarasampettai Post
Tiruchy District
Rep. By its Managing Director

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the respondents 1 & 3 issued in Lr. No.19976/FR.8/ 10-3 Environment & Forests Department dated 08.03.2011 and Ref. No. 10288/2010(A3) dated 25.03.2011 respectively and quash the same and to direct the respondents herein to forthwith disburse the

third and final settlement of the 6th Pay Commission arrears and desist from making any recovery from the members of the petitioner's association, towards the said Scheme and to pass further orders.

For Petitioner : Mr. M. Ravi

For Respondents: Mr. N. Inbanathan,
Government Advocate for R1

Mr. S. Navaneethan, AGP for R2

No Appearance for R3

O R D E R

Originally, the Tamil Nadu Plantation Corporation Retired Employees Welfare Association, represented by its President Mr.M. Palaniswamy, filed the present writ petition, seeking to quash the orders of the 1st respondent issued in Lr. No.19976/FR.8/ 10-3 Environment & Forests Department dated 08.03.2011 and of the 3rd respondent in Ref. No. 10288/2010(A3) dated 25.03.2011 and to direct the respondents herein to forthwith disburse the third and final settlement of the 6th Pay Commission arrears and desist from making any recovery from the members of the petitioner's association, towards the said Scheme. Pending writ petition, an affidavit dated 12.04.2017 has been filed before this Court stating that the petition is restricted to the present petitioner T. Ramu, instead of the Association, and seeking liberty to make a fresh representation by the other members of the Association and the legal heirs of the deceased members of the Association. By order dated 12.04.2017, this Court accepted the same and amended the cause title. Therefore, the prayer sought for in this writ petition is restricted only to the present petitioner namely, T. Ramu.

2. Brief facts of the case is as follows :-

The Government of Tamil Nadu, Finance (Pension) Department, has issued G.O.Ms. No.488 Finance (Pension) Department dated 12.08.1996, accepting the long pending demand of surrender of half pay leave on private affairs at the time of retirement and also to grant full leave salary for encashment of the entire earned leave at credit of retiring employees. Initially the scheme of encashment of Unearned Leave on private affairs was introduced only to State Government employees. Subsequently, considering the representation of various Associations, the Government issued Lr.No.37568/BPE/2006 Finance (BPE) Department dated 28.01.2008, extending the same benefit to

the employees of the Statutory Boards and State Public Sector Undertakings/ Board, who are getting Government scales of pay, with effect from 28.01.2008. The said benefit was also extended to the employees of the 3rd respondent Board. Thereafter, the Government issued the impugned letter No.19976/FR.8/ 10-3 dated 08.03.2011 stating that the facility of surrender of Earned Leave for 30 days and encashment of Unearned leave on private affairs are applicable only for the Government employees and not for employees of State Public Sector Undertakings and that the action of the 3rd respondent of extending these facilities to their Board employees, without obtaining Government approval is not appropriate and that the amount of such encashment has to be recovered from the concerned employees. In view of that, the 3rd respondent passed the impugned proceedings in No.10288/2010/A3 dated 25.03.2011, requesting all the Regional Managers of the Plantation Corporation to stop and retain the payments towards third and final settlement of 6th Pay Commission arrears of retired employees who have encashed the unearned leave on private affairs facilities at the time of their retirement, until further orders. Aggrieved by the aforesaid orders, the present writ petition has been filed.

3. Learned counsel for the petitioner brought to the notice of this Court, in similar matters the Managing Director, TANTEA has rejected the benefits granted under the Government order, claiming encashment of 50% of the unearned leave on private affairs. By order dated 29.06.2016, in W.A. Nos.1352/2015, 1035/2015, 292/2016 and 293/2016, this Court allowed the Writ Appeals. The relevant portion of the order is extracted below :-

" 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 two months from the date of receipt of a copy of this order ”.

4. Learned counsel appearing for the respondents, accepted that the petitioner is eligible for the benefit of the G.O. Ms. No. 488 Finance (Pension) Department dated 12.08.1996.

5. Heard learned counsel for the petitioner and learned Additional Government Pleader and learned Government Advocate for the respondents 1 and 2.

6. Considering the submissions made by the learned counsel for both sides and the aforesaid judgment of the Division Bench of this Court dated 29.06.2016, the impugned orders passed by the 1st respondent in Lr. No.19976/FR.8/ 10-3 Environment & Forests Department dated 08.03.2011 and the 3rd respondent in Ref. No. 10288/2010(A3) dated 25.03.2011 are set

aside. The present writ petition is allowed, with a direction to the 3rd respondent to pass appropriate orders, in the light of the judgment of the Division Bench of this Court dated 29.06.2016, in W.A. Nos.1352/2015, 1035/2015, 292/2016 and 293/2016. The petitioner is at liberty to approach the 3rd respondent, by making fresh representation, claiming the other benefits applicable to him. If any representation is received by the 3rd respondent, it is open to him to consider the same, as per law, as expeditiously as possible. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

avr
To

1. The Principal Secretary to Govt.,
Environment & Forests Dept.,
Secretariat, Chennai-9.
2. The Secretary to Govt.,
Finance (BPE) Department,
Secretariat,
Chennai-9.
3. The Managing Director,
Tamil Nadu Plantation Corporation Ltd.,
(TAF CORN), Karur Road,
Mallachipuram,
Kambarasampettai Post,
Tiruchy District.

+1cc to the Special Government Pleader Sr.25032

+1cc to the Special Government Pleader Sr.918 [17/05/2017]

+1cc to Mr. M. Ravi, Advocate Sr.962 [17/05/2017]

W.P. No. 30104 of 2011
and

M.P. Nos. 1 & 2 of 2011

sai[co]
srg 05/05/2017