HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.Nos. 3695,3701 & 6879 of 2009

COMMON ORDER

The short point involved in the present writ petitions is with regard to calculation of Earned Leave/Vacation Leave by the employer.

It is the contention of the petitioners that 26 working days should be taken for the purpose of calculating the EL/VL, whereas the respondent-Corporation states that as per the Leave Rules, the weekly holiday and public holidays are included as working days and it is a practice for calculating EL/VL.

The employees Leave Rules governing the calculation of Earned Leave/Sick Leave/Vacation Leave (for employees not covered under ESIS), consists of scheme 'A' or Scheme 'B'. The relevant provisions of the scheme read as follows:

> "**SCHEME A**:
>
> (a) Employees who are borne on the permanent rolls of the company or who are temporarily employed for a period not less than 12 months, not covered under the ESI Scheme and worked for a period of 240 days or more shall be allowed Earned Leave, on full pay at the rate of one and a half day for service completed for each month. Earned leave can be accumulated up to a maximum of 180 days. However, employees are entitled for terminal benefits for the total Earned Leave available at their credit

on superannuation/voluntary retirement/resignation/termination etc.

(b) Sick leave of 28 days on half pay in a calendar year, which can be commuted to 14 days with full pay and accumulation of HPSL is allowed upto a maximum of 240 days.

OR

SCHEME 'B'

Employees who are borne on the permanent rolls of the company or who are temporarily employed for a period not less than 12 months, not covered under the ESI Scheme are eligible to Vacation Leave at the rate of two and a half days per month i.e., 30 days in a calendar year. Vacation Leave can be accumulated upto a maximum of 300 days.

Explanation (Personnel Circular No.1333/2004-04, dated 20.10.2003)

i) **For the purpose of EL/VL**

(a) Any day of lay off by agreement or contract or as admissible under Rules and Maternity Leave to female employees not exceeding twelve weeks, shall be deemed to be the days on which the employees have worked for the purpose of calculation of the period of 240 days or more.

(b) Weekly holidays and public holidays shall be deemed as days on which the employees have worked."

It appears that the Department of Public Enterprise, issued a memo on 11.12.2008 directing all the Public Sector Undertakings to adopt 30 days a month for calculating the EL/VL encashment. In terms thereof, the respondent-Corporation issued a circular on 11.3.2009 replacing the method of taking 30 days a month instead of 26 days for the purpose of calculating EL/ and VL and the same is challenged in the present writ petition.

As could be seen from the above Rules, there cannot be any doubt with regard to the basis for calculating EL/VL by treating the month as 30 days. The practice of taking 26 days a month was pointed out by the Controller & Audit General of India.

This Court sees no ground to grant the relief sought for in these writ petitions and the same are dismissed accordingly. If any amount is paid to the employees, who have already retired by calculating EL/VL encashment by taking 26 days a month, the same shall not be recovered from them. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

14th November,2017

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