

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.42100 of 2016

C.Deivanayagam

... Petitioner

Vs

1.The Director of Town Panchayats,
Kuralagam Buildings,
Chennai-600 104.

2. The District Collector,
Dharmapuri,
Dharmapuri District.

3.The Assistant Director of Town Panchayats,
Dharmapuri Zone,
Dharmapuri District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in Na.Ka.No.2173/2016/TP3 dated 14.10.2016 and quash the same and consequently, direct the respondents to forthwith pay the encashment of earned leave benefits for a period of 240 days and encashment of leave on private affairs benefits for a period of 90 days.

For Petitioner : Mr.K.Raja
for M/s.N.Kolandaivelu

For Respondents: Mrs.Narmadha Sampath, Addl.
Advocate General assisted by
Mrs.P.Rajalakshmi,
Addl. Govt. Pleader

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O R D E R

Challenging the proceedings of the 3rd respondent in Na.Ka.No.2173/2016/TP3 dated 14.10.2016 and to quash the same and for consequential direction, directing the respondents to forthwith pay the encashment of earned leave benefits for a period of 240 days and encashment of leave on private affairs benefits for a period of 90 days to the petitioner, the present Writ Petition has been filed.

2. The case of the petitioner is that he was initially appointed as Junior Assistant in the respondent Panchayat in the year 1973 and thereafter, he was given promotion as Assistant in the year 1992, subsequently, as Executive Officer Grade-I in the year 1995. Later on, as Selection Grade Executive Officer in the year 2000 and once again promoted as Assistant Director of Town Panchayats in the year 2009. Subsequently, he was placed under suspension on 30.07.2014. As a result, he was not permitted to retire from service on 31.07.2014.

3. The grievance of the petitioner under this background as admitted by the learned Counsel appearing for the petitioner is that as per Rule 7(1) of the Tamil Nadu Leave Rules, 1933 which is paramaterial to Fundamental Rules of the Tamil Nadu Government FR.86(a)(i), the petitioner is entitled to receive the encashment of earned leave benefits for a period of 240 days and encashment of leave on private affairs benefits for a period of 90 days. But the same has been denied in the impugned order. Therefore, the petitioner is before this Court, he pleaded.

4. The learned Counsel appearing for the petitioner also submitted that the reason for the retention of the petitioner in the Department even after reaching the age of superannuation on 31.07.2014 for facing 3 charge memos issued against him. Out of the 3 charge memos issued, two charge memos were dropped, namely, Charge Memo dated 23.7.2014 was dropped by issuing G.O.No.458, Municipal Administration and Water Supply (TP.IV) Department dated 29.11.2017 and the charge memo dated 06.02.2013 was dropped on the basis of the Audit Objection issued by the Regional Joint Director, Local Audit, Tiruchirappalli and the same is pending for compliance before the Assistant Director of Town Panchayats, Dharmapuri Zone, Dharmapuri District.

5. Per contra, the learned Additional Advocate General appearing for the respondents refuting the contentions made by the learned Counsel for the petitioner submitted that it is not true that two charge memos were dropped. Only one charge memo, namely, Charge Memo dated 23.7.2014 was dropped by issuing G.O.No.458, Municipal Administration and Water Supply (TP.IV) Department dated 29.11.2017 is dropped against the petitioner.

6. This Court is not concerned with whether another charge memo has been dropped or pending for consideration. The only issue needs adjudication by this Court is whether the petitioner is entitled to get back the encashment of earned leave benefits for a period of 240 days and encashment of leave on private affairs benefits for a period of 90 days or not in the light of Rule 7(1) of the Tamil Nadu Leave Rules, 1933 which is paramaterial to Fundamental Rules of the Tamil Nadu Government FR.86(a)(i) which is extracted here under :

'Leave at the credit of a Government servant in his leave account, other than earned leave and leave on private affairs shall lapse on the date of retirement or on the date of termination of the extension of service, as the case may be. The competent authority (leave sanctioning authority) shall suo motu draw and disburse the cash benefits of encashment of earned leave and leave on private affairs at the credit of the Government Servants in Groups B, C and D without formal sanction orders on the date of retirement or on the date of termination of the extension of service as the case may be or on the next working day, following the date of retirement or the date of termination of extension of service happens to be a holiday. In respect of Group A officers, the Accountant General or Pay and Accounts Officer, as the case may be, shall suo motu issue the pay slips for encashment of earned leave and leave on private affairs, as aforesaid, at the credit of the Government Servants without formal sanction orders, on the date of retirement or on the date of termination of the extension of service, as the case may be, or on the next working day, following the date of retirement or the date of termination of extension of service if the date of retirement or the date of termination of extension of service happens to be a holiday.'

7. A Division Bench of this Court while dealing with a similar issue in W.A.No.1700 of 2015 dated 18.1.2016 (The Joint Registrar of Co-operative Societies, Nagapattinam Region, Nagapattinam and another vs. R.Chithravelu) has held as follows:

'9. In this respect the Writ Court has rightly placed its reliance on the Full Bench judgment of the Punjab and Haryana High Court in Punjab State Civil Supplies Corporation Ltd., and Others vs. Pyare Lal {LPA No.113 of 2012 dated 9.11.2012}.

10. Further, in Rule 7(1) of the Tamil Nadu Leave Rules, 1933, quoted by the learned counsel for the appellants, there is no prohibition for the payment of Earned Leave and Leave on Private Affairs to those who are facing any enquiry after the date of retirement. In such circumstances, the clarification letter of the Government dated 17.9.1990 cannot alter the above position of law. Thus, in the circumstances, no interference is called for.

11. In view of the foregoing, this Writ Appeal fails and it is dismissed. No costs.

Consequently, connected miscellaneous petition is also dismissed.''

Since this issue has been settled once and for all, this Court is bound by the order passed by the Hon'ble Division Bench. This order has been followed by me in my subsequent orders in W.P.No.4995/2018 dated 22.3.2018 (S.Rajagopal vs. The Registrar of Co-operative Societies, 170, Periar EVR Salai, Kilpauk, Chennai-10 and two others). Therefore the issue raised in this Writ Petition is no longer res integra.

8. In view of all the above, this Court is inclined to allow the present Writ Petition. Accordingly, the Writ Petition is allowed and the proceedings of the 3rd respondent in Na.Ka.No.2173/2016/TP3 dated 14.10.2016 is hereby quashed and a direction is issued to the respondents to settle the Earned Leave Encashment Benefits and Encashment of Leave on Private Affairs benefits to the petitioner, which are due to him based on the Earned Leave accumulation to his credit, within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Director of Town Panchayats,
Kuralagam Buildings,
Chennai-600 104.
2. The District Collector,
Dharmapuri,
Dharmapuri District.
- 3.The Assistant Director of Town Panchayats,
Dharmapuri Zone,
Dharmapuri District.

+1cc M/s.N.Kolandaivelu, Advocate sr.no.80740
+1cc to Government Pleader sr.no.81425

W.P.No.42100 of 2016

rgn(co)
nr 24/12/2018