IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.11.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.24968 of 2013

J.Padmanaban ... Petitioner

Vs

1. The Managing Director,
   The Tamil Naud Co-operative Milk
   Producers Federation Limited, Aavin Illam,
   Madhavaram Milk Colony,
   Chennai 600 051.

2. The Joint Managing Director,
   The Tamil Nadu Co-operative Milk
   Producers Federation Limited,
   Ambattur Dairy Complex,
   Chennai 600 098.

3. The Registrar of Milk Co-operatives /
   Commissioner for Milk Production and Dairy Development,
   Dairy Development Department,
   Madhavaram Milk Colony, Chennai 600 051.

... Respondent

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in proceedings bearing Ref. No.983/E3/13 dated 31.05.2013 and quash the same in so far as it seeks to withhold a sum of Rs.4,68,000/- from the terminal benefits due and payable to me and consequently, direct the respondents to release a sum of Rs.4,68,000/- with held by the second respondent from the leave salary amount due and payable to the petitioner.

For Petitioner : Mr.K.Viswanathan

For Respondents: Mr.P.K.N.Ashok Kumar
Advocate for RR1 and R2
Mr.L.P.Shanmugasundaram
Advocate for R3

O R D E R

This instant writ petition has been filed challenging the impugned order passed by the respondent dated 05.08.2009 in Case No.36764 /Enquiry/2008, setting aside the order dated 22.04.2008 to withhold a sum of Rs.4,68,000/- from the terminal benefits due and payable to the petitioner and consequentially, seeking for a direction to the respondents to release a sum of Rs.4,68,000/- with held by the second respondent from the leave salary amount due and payable to the petitioner.

2. The case of the petitioner is that the petitioner joined as Junior Assistant on 09.11.1976 with the respondent Corporation. He was promoted as Deputy Manager (Marketing) with effect from 04.11.2003 and after attaining the age of superannuation, he was allowed to retire on 31.05.2013. On the date of retirement, a sum of Rs.4,68,000/- was withheld from his retrial benefits for drawal of temporary advance towards granules purchase made in the year 1992 payable on account of leave encashment. The petitioner states that the said amount was withheld for the reason that when he was working in a purchase Department, the payment made to M/s.India Petro Chemicals Limited (IPCL) towards the purchase of granules in the year 1992 for conversion into poly film by poly film manufacturers and the accounts were not settled. The petitioner states that settlement of advances is the joint responsibility of the staff and officers of the stores section, purchase section and accounts section and the above cannot be held responsible for the non-recovery of the amount. The second respondent issued proceedings bearing Ref.No.983/E3/13 dated 31.05.2013 to withheld a sum of Rs.4,68,000/- from the petitioner. Challenging the proceedings of the 2nd respondent withholding the amount, the petitioner filed this present writ petition.

3. The learned counsel for the petitioner contended temporary advance is given against invoice for purchase of granules for conversion into poly film by poly film manufacturers. According to the petitioner, the settlement of advances is the joint responsibility of the officers and staffs of the stores section, purchase section and Accounts Section, The petitioner further states that he joined the Department in the concerned section in the year 1993 and therefore, he was not responsible for the payment of advance. The petitioner states that he could not be singled out for the loss caused to the department.

4. The respondent has filed a counter affidavit and it is relevant to extract paragraph No.4 as follows :-

> 4. I submit that the petitioner had worked in the purchase section at GM's office from 23.04.1993 to 09.10.2001. He had taken charge from his predecessor Mr.S.Rangarajan. Though the advance was drawn during the period 1992, when there was crises for the procurement of poly end film for packing milk in sachets in Tamil Nadu District Co-operative milk producers unions and Federation, the advances were drawn and paid to M/s.IPCL (M/s.Indian Petro Chemicals Limited, Vadodara/Chennai (A Government of India undertaking) for the purchase of LDPE granules for converting into poly end film for packing milk sachets. The individual had worked in purchase section nearly 8 1/2 years. It is the duty of the individual to take action to settle the advances which related to purchase of granules and poly end film. During the period he had not settled the advance to the tune of Rs.4,68,000/-toM/s.TPCL for the purchase of granules. The individual was asked several times to come over to this office for reconciliation of temporary advance. But he had replied that, the temporary advance was pending from the year 1992 - 1993 which was not pertaining to his tenure at purchase section. Since the individual had worked more than 8 1/2 years in purchase section, he had to settle the advance by placing the matter to his higher officials to settle the matter. Since the individual had not taken any efforts to settle the advance, he was issued a show cause notice on 23.05.2013 and was allowed to retire on 31.05.2013 withholding a sum of Rs.4,68,000/- pending temporary advance towards granule purchase from his terminal benefits.

5. Heard the learned counsel for the parties.

6. The learned counsel for the petitioner placed reliance on the Judgment of this Court in W.A.(MD) No.105 of 2019 dated 31.07.2019 which squarely covers the case of the petitioner. It is relevant to extract the said order as follows :-

> 17.Next contention of the appellants is in respect of Rule 7 of the Tamil Nadu Leave Rules, 1933. A careful perusal of the Rule 7 of the said Rules would again show that even the Government Servant, who is terminated from service or compulsorily retired from service as a measure of punishment, is also entitled for encashment of Earned Leave and leave on private affairs.

Therefore, the entitlement of such Government Servant to encash such Earned Leave and leave on private affairs is not altered even assuming that he is punished by way of termination of his service. Therefore, we find that the contention raised by the appellants on this ground is also liable to be rejected.

18.It is to be noted at this juncture that there is no total prohibition or denial of the benefit sought for by the writ petitioner in any of the provisions made under the relevant rules. It is only a time of disbursement of such benefit is stated. Even as per the rules, these benefits sought by the writ petitioner become payable automatic at the relevant point of time. Therefore, when the entitlement for such payment is not in question and only the time of disbursement is postponed under a given circumstance, especially when the retention of those benefits is not having a bearing on any eventuality, the Court can interfere and direct such payment even before the relevant time for disbursement of such payment, when the beneficiary seeks to get the same immediately. When the entitlement is not in dispute, it makes no difference whether it is paid at the request of the beneficiary or at a latter date viz., relevant time, at which, it is liable to be paid.

19.The learned Single Judge of this Court in a decision reported in 2016(1) LLJ 730 (Mad) (cited supra) has dealt with the above issue and found at paragraphs 15 and 16 as follows:-

" 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.

16. Likewise, in this case, the issue is only relating to payment of Earned Leave Encashment Benefit. The same principle that is applicable to Earned Leave Encashment Benefit is also applicable to the payment of General Provident Fund and to the contribution made by a Government employee to Special Provident Fund. In the case of industrial employees, the contribution made by the industrial workman to the Provident Fund from his wages could not be deprived by the employer even if he is dismissed from service."

20.The said decision was approved by the Division Bench of this Court in W.A(MD)No.1423 of 2018 dated 22.10.2018, wherein the Division Bench has observed as follows:-

"Challenging the order of the learned Single Judge, by which the retiral benefits were sought to be disbursed to the respondent by the appellants notwithstanding the pendency of the criminal case, pending on the date of superannuation, the present appeal has been filed.

2.The learned Special Government Pleader appearing for the appellants would submit that the order of the learned Single Judge cannot be sustained in the eye of law as the respondent was not permitted to retire, pending criminal case.

3.The learned Counsel appearing for the respondent would submit that the encashment of earned leave is acquiring a property owned by a person and therefore, notwithstanding the order of dismissal, the same cannot be denied. Reliance has been made on the order of the learned Single Judge in T.Veeravinothan Vs. Registrar of Co-operative Societies, Kilpauk, Chennai and others reported in 2016-1-LLJ-730 (Mad), wherein it has been held as follows:

"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.Considering the above, we are of the view that the order of the learned Single Judge giving a direction to the respondents to disburse all the benefits cannot be sustained, except to the extent of payment of earned leave salary alone. In the light of the decision supra, the encashment of earned leave is to be treated as a property owned by a person even one assumes a worst situation by which the employee is dismissed.

5.In such view of the matter, this Writ Appeal stands allowed in part. Accordingly, the appellants are directed to release the earned leave salary of the respondent within a period of eight [8] weeks from the date of receipt of a copy of this order. No costs.

Consequently, the connected miscellaneous petition is closed.”

21.The another Division Bench of this Court in W.A.No.207 of 2016 dated 26.02.2016, has considered the very same issue and observed as follows:-

“The instant intra-court appeal arises from the order dated 2nd June, 2015 made in W.P.No.15457 of 2015.

2. The writ petitioner, who is the respondent herein, filed the writ petition, seeking direction to the appellants herein to disburse his retirement benefits, such as gratuity, special provident fund, encashment of earned leave and unearned leave on private affairs.

3. The respondent herein working as Electrician in the Electricity Board was to retire on attaining the age of superannuation on 30th June, 2013. However, he was not permitted to do so on account of pendency of the criminal case under the provisions of the Prevention of Corruption Act, 1988.

4. The learned Single Judge, considering all aspects of the matter, held that the petitioner was having earned leave and unearned leave on private affairs before initiation of the case and as such, he is entitled to encashment of earned leave and unearned leave on private affairs. The claim of gratuity was given up by the employee / writ petitioner on the ground that in the event of conviction and dismissal of service, the writ petitioner may not be entitled to get gratuity. The special provident fund was also not granted as the writ petitioner failed to establish any contribution made by him. While disposing of the writ petition, a direction was made to the appellants herein to disburse encashment of earned leave and encashment of unearned leave on private affairs. In respect of special provident fund, it was held that if any contribution was made by the writ petitioner, the same can be paid to the petitioner.

5. We do not find any error, illegality or infirmity in the order sought to be impugned in this writ appeal preferred by the Tamil Nadu Generation and Electricity Distribution Corporation Ltd., warranting interference. Thus, the writ appeal stands dismissed. No costs. Consequently connected miscellaneous petition stands closed.”

22.The above said decision of the Division Bench was put to challenge before the Apex Court, which, inturn, dismissed the Special Leave Petition on 06.07.2017 by observing that no ground to interfere with the impugned order of the Division Bench.

23.In a recent decision of the Division Bench reported in 2019- Writ.

L.R. 825 [State of Tamil Nadu vs. V.Mahalingam], the same issue was considered and it has been observed at paragraph 5 as follows:-

“5. Before proceeding further, it would be necessary to examine the nature and legal basis for payment of 'earned leave' to Government Servants.

Rules 7 to 12 of the Tamil Nadu Leave Rules, 1933, contain the statutory provisions for earned leave. It could be seen from the aforesaid provisions that the leave account of every permanent Government Servant shall be credited with earned leave in advance in two instalments of fifteen days each on the first day of January and first day of July every year. The leave at the credit of a Government Servant at the close of the previous half year shall be carried forward to the next half year, subject to the condition that the leave so carried forward plus the credit for the half year do not exceed the maximum limit of 240 days. The said rules further provide that if the leave standing to the credit of the Government Servant is not taken within a year as per the Service Rules, it may be encashed or accumulated. The accumulated leave may be availed by the Government Servant during his tenure of service or at the time of retirement or leaving the employment which obviously means that the right of the Government Servant to receive the same stands vested with him during that period itself which he can utilize at anytime he chooses. The Hon'ble Supreme Court of India in State of Jharkhand -vs- Jitendra Kumar Srivastava [(2013) 12 SCC 210] has made it abundantly clear that leave encashment cannot be taken away without any statutory provision. In short, 'earned leave' which is created by statute, partakes the character of an emolument protected as a right to property of the concerned Government Servant under Article 300-A of the Constitution. It has been provided in Rule 86(a)(i) of the Fundamental Rules that the Competent Authority shall suo motu draw and disburse the cash benefits and encashment of the earned leave at the credit of the Government Servant without formal sanction orders on the date of retirement or the date of termination of extension of service, as the case may be. The removal of a Government Servant from service as a measure of punishment of conclusion of disciplinary proceedings after extending his service on attaining the age of superannuation for that purpose, would naturally amount to 'termination of extension of service', and in terms of that rule, the Competent Authority on that date ought to have suo motu disbursed the cash benefit and encashment of earned leave, if the same had not been availed by the Petitioner earlier. The Second Respondent has wrongfully refused to pay the earned leave to the Petitioner, which he was legitimately entitled to receive, even on that date."

6. A reading of the judgment would show that it has been repeatedly and consistently held by the Supreme Court, this Court and Punjab and Haryana Court, unless the rules did not permit, leave encashment amount payable to an employee cannot be withheld.

7. In view of the above, this writ petition is allowed. The respondents are directed to release the amount of Rs.4,68,000/- with interest at the rate of 10% per annum from the date of retirement i.e on 31.05.2013 till date to the petitioner, within a period of 10 days from the date of receipt of copy of this order.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Managing Director,
The Tamil Naud Co-operative Milk
Producers Federation Limited, Aavin Illam,
Madhavaram Milk Colony,
Chennai 600 051.

2. The Joint Managing Director,
The Tamil Nadu Co-operative Milk
Producers Federation Limited,
Ambattur Dairy Complex,
Chennai 600 098.

3. The Registrar of Milk Co-operatives /
Commissioner for Milk Production and Dairy Development,
Dairy Development Department,
Madhavaram Milk Colony, Chennai 600 051.

+1cc to Mr.T.K.Ashok Kumar, Advocate Sr.93224
+1cc to the Special Government Pleader Sr.93314
+1cc to Mr.V.Suthakar, Advocate Sr.93178

W.P.No.24968 of 2013

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