IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.03.2019

Pronounced on : 08.04.2019

CORAM :

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.28097 of 2012

Tamil Nadu Tourists Development Corporation's
Retired Officers and staffs
Welfare Association,
Rep.by its President
Mr.A.Muthukumarasamy. ... Petitioner

Vs

1.The State of Tamil Nadu,
Rep.by its Secretary,
Finance (BPE) Department,
Secretariat,
Fort.St.George,
Chennai-9.

2. Tamil Nadu Tourism Development,
Corporation Limited, rep.by its
General Manager,
No.2, Walajah Road,
Chennai - 600 002.

3. The Chairman and Board of Directors,
Tamil Nadu Tourism
Development Corporation Limited
No.2, Walajah Road,
Chennai - 600 002.

4. The Managing Director,
Tamil Nadu Tourism
Development Corporation Limited
No.2, Walajah Road,
Chennai - 600 002. ... Respondents

PRAYER: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent relating to the proceedings letter No.6360/A.2/2011 dated 13.03.2012, rejecting the petitioners' demand of to give effect the 1st respondent's letter No.37568/BPE/2006 dated 28.01.2008 from 28.01.2008 and quash the same and consequently, direct the 2nd to 4th respondents to extend the benefits of G.O.Ms.488, Finance (Pension) Department dated 12.08.1996 read in conjunction with Govt.Lr.No.37568/BPE/2006 Finance (BPE) Department dated 28.01.2008 to the Members of the petitioners association as directed by the 1st respondent in its letter dated 28.01.2008.

For Petitioner : Mr.P.Thiagarajan

For R1 : Mr.M.Elumalai
(Government Advocate)

For RR2 to 4 : Mr.A.Vijayakumar

ORDER

This writ petition has been filed by the Tamil Nadu Tourism Development Corporation's retired Officers and Staffs Welfare Association represented by its President Mr.A.Muthukumarasamy, to issue a writ of Certiorarified Mandamus, calling for the records of the second respondent relating to the proceedings Letter No.6360/A.2/2011 dated 13.03.2012, rejecting the petitioners' demand to give effect to the 1st respondent's letter No.37568/BPE/2006 dated 28.01.2008 from 28.01.2008 and quash the same and consequently, direct the 2nd to 4th respondents to extend the benefits of G.O.Ms.488, Finance (Pension) Department dated 12.08.1996 read in conjunction with Govt.Lr.No.37568/BPE/2006 Finance (BPE) Department dated 28.01.2008 to the Members of the petitioner's Association as directed by the 1st respondent in its letter dated 28.01.2008.

2. The petitioner's Association was registered under the Societies Registration Act. The Members are retired employees and staff of Tamil Nadu Tourism Development Corporation Limited, who retired between 28.01.2008 and 29.06.2010. They are aggrieved by the impugned order of the second respondent in Letter No.6360/A.2/2011 dated 13.03.2012.

3. The impugned order is extracted below for better appreciation:

"Tamil Nadu Tourism
DEVELOPMENT CORPORATION LTD.,
(A Govt. of Tamil Nadu Undertaking)

Letter No.6360/A.2/2011
Dated:13.03.2012

To

The Retired Officers & Staff of TTDC
1B, Gurunarul Illam
3rd Street, Dr.Ramamurthy Nagar
Madipakkam, Chennai - 600 091

Sir,

Sub : TTDC - Admn.-Representation of Retired Officers of TTDC for encashment of unearned Leave on private affairs-Reg.

Ref : From the Retired Officers & Staff of TTDC, Chennai-91

We wish to inform you that the benefit of encashment 90 days of unearned leave on private affairs to retired employees of Tamil Nadu Tourism Development Corporation is payable only from the date of Board approval viz.15.06.2010.

Yours faithfully

GENERAL MANAGER"

4. The learned counsel for the petitioner's Association drew the attention of this Court to the proceedings in Letter No.37568/BPE/2006 dated 28.01.2008, issued by the first respondent, the Secretary to the Government, Finance (BPE) Department. According to the learned counsel, the said proceedings are applicable to the members of petitioner's Association and it is their grievance that the second respondent had not followed the said proceedings of the first respondent in its true spirit. The said letter dated 28.01.2008 is reproduced below for better appreciation:

"In the Government letter 2nd cited among other things while extending the facility of encashment of Earned Leave at the time of retirement for the employees of State Public Sector Undertakings / Boards, it was instructed that the Government have not extended the benefit of encashment of Unearned Leave on Private Affairs to the employees of the State Public Sector Undertakings / Boards as in the case of Government Servants, with reference to the G.O.Ms.No.488, Finance (Pension) Department Dated:12.08.1996, first cited.

2.As far as Statutory Boards are concerned, they follow the Tamil Nadu Leave Rules, 1933 applicable for Government Servants as amended from time to time. Also, since the Service Rules and Regulations of the Statutory Boards provide for all the benefits extended to Government Servants, re-examination of this issue became necessary.

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

> "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 Board 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.

5.The Chief Executive Officers of State Public Sector Undertakings/Boards are requested to place this before the Board of Directors in the next meeting."

5. This letter had been issued on 28.01.2008. By this letter, the facility of encashment of Earned Leave at the time of retirement of Government servants were also specifically extended to employees of all Statutory Boards and State Public Sector Undertakings who were getting Government scales of pay.

6. In the affidavit filed in support of a writ petition, the writ petitioner had stated that the Association members are retired employees and staff of Tamil Nadu Tourism Development Corporation Limited who had retired between 28.01.2008 and 29.06.2010. It had been claimed that the members of the petitioner's Association are eligible to avail the benefit as provided in Letter No.37568/BPW/2006 dated 28.01.2008 issued by the first respondent. A further examination of the said proceedings reveal that it had been stated by the first respondent that the said instructions, namely, extending the encashment of Unearned Leave on private affairs would take effect from the date of issue of orders namely 28.01.2008 and it was further directed that the Chief Executive Officers of the State Public Sector Undertakings / Boards were requested to place the said proceedings before the Board of Directors in the next meeting. As repeatedly pointed out, above these instructions were issued on 28.01.2008.

7. It is not in dispute that Tamil Nadu Tourism Development Corporation Limited is a Statutory Board under the Government of Tamil Nadu. There was a normal expectation of the employees and staff of Tamil Nadu Tourism Development Corporation Limited that the proceedings dated 28.01.2008, referred above of the first respondent would also be extended to them from the date of issue of order. However, by the impugned order, it had been stated by the second respondent, General Manager, Tamil Nadu Tourism Development Corporation Limited that the benefit of encashment of 90 days of Unearned Leave on private employees to retired employees, namely, the petitioner's Association herein who retired after 28.01.2008 only with effect from 15.06.2010.

8. The learned counsel for the writ petitioner urged before this Court that the members of the petitioner's Association cannot be denied the facility which had been directed to be extended by the first respondent. It was further pointed out that in the proceedings dated 28.01.2008, it had been specifically mentioned that it will take effect from the date of orders being passed and that the matter should be placed before the Board of Directors during the next meeting.

9. In the counter affidavit of the second and fourth respondents it had been stated that the said instructions cannot be implemented automatically without due deliberation and decision of the Board. It was also stated that the extension of the scheme was left to the discretion of the Board of Directors of the respective Public Sector Undertakings. It was also stated that the Management of Tamil Nadu Tourism Development Corporation Limited received representations from the employees to extend the scheme only on 15.03.2010. This was placed before

the Board on 15.06.2010. The Board approved the proposal and issued administrative order pursuant to the Board resolution and extended the scheme from 29.06.2010. It had also been stated that the scheme can only be prospective and cannot be retrospective from 12.08.1996. It had also been stated that there was no delay on the part of the said respondents in implementing the scheme. It had also been stated that the question of ante-dated eligibility would not arise since it would entail huge financial commitment. It was therefore stated that the writ petition should be dismissed.

10. Heard arguments advanced by Mr.P.Thiagarajan, learned counsel for the petitioner's Association and Mr.M.Elumalai, learned Government Advocate for R1 and Mr.A.Vijayakumar, learned counsel for R2 to R4.

11. It is an admitted fact that the first respondent had issued instructions in Letter No.37568/BPE/2006 dated 28.01.2008, extending the scheme of encashment of Unearned Leave on private affairs as ordered in G.O.Ms.488, Finance (Pension) Department dated 12.08.1996 to the employees of all Statutory Boards and State Public Sector Undertakings who are getting Government scales of pay. It is also seen that Statutory Board like Tamil Nadu Tourism Development Corporation Limited follow the Tamil Nadu Leave Rules, 1933, which are applicable for Government servants as amended from time to time. The Service Rules and Regulations of the Statutory Board like Tamil Nadu Tourism Development Corporation Limited provide for all the benefits which have been extended to Government servants. To maintain parity, the proceedings in Letter No.37568/BPE/2006 dated 28.01.2008, had been issued by the first respondent. There was an obligation caused on the Chief Executive Officers of State Public Sector Undertakings / Boards to place matter before the Board of Directors in the next meeting after 28.01.2008. This does not require any representation to be made by the retired employees who would be benefited by the said proceedings. It was a statutory duty cast on the Board of Directors.

12. In this case, the Tamil Nadu Tourism Development Corporation Limited should have immediately followed the instructions of the first respondent in its true spirit and should have extended the benefits thereof to its employees. The stand in the counter statement that the respondents 2 to 4 began moving the wheel in this direction only after representation was received on 15.03.2010 cannot be accepted by this Court. It is very surprising to note that such a stand had been taken. Hypothetically, if no representation at all had been received, then whether the Board would have ever acted on the instructions issued by the first respondent is a mute question. The

proceedings in Letter No.37568/BPE/2006 dated 28.01.2008, did not stipulate that Statutory Boards like the Tamil Nadu Tourism Development Corporation Limited, must implement the said instructions only on receipt of representations from its employees. On the other hand, an obligation was placed on the Chief Executive Officers to take steps on the said instructions for consideration on the very next meeting before the Board of Directors.

13. In the counter there is no whisper at all as to what the Chief Executive Officer or any other Statutory Official of the Tamil Nadu Tourism Development Corporation Limited, did from 28.01.2008 till 15.03.2010, when representation was sent by the petitioner's Association. The Chief Executive Officer or any other competent responsible Officer should have immediately take steps to address the instructions issued by the first respondent. They cannot hide behind the screen of there being no representation received to implement the instructions.

14. I am not able to comprehend as to how the members of the petitioner's Association alone can be deprived of this facility between the period 28.01.2008 and 15.06.2010. There appears to be no rationale in this discrimination of the members of the petitioner's Association from their due entitlement which they were legally entitled to receive in view of the services provided by them as employees and staffs of Tamil Nadu Tourism and Development Corporation Limited. There cannot be a separate class created within a group of employees and benefits extended to one group and denied to the other group. This would go against the tenants of equality as provided in the Constitution and protection given to any Government servant. Further, in this case the employees of statutory bodies are governed by the Tamil Nadu Leave Rules, 1933 and the Service Rules and Regulations are extended to them, similar to that of Government servants.

15. In Asger Ibrahim Amin v. LIC (2016) 13 SCC 797, the following observations would be relevant:

> "3.On 8-8-1995, that is, post the promulgation by the respondent of the Pension Rules, the appellant enquired from the respondent whether he was entitled to pension under the Pension Rules, which has been understood by the respondent as a representation for pension; the respondent replied that the request of the appellant cannot be acceded to. The appellant took the matter no further but has averred that in 2000, prompted by news in a daily and judgments of a High Court and a Tribunal, he requested the respondent to reconsider his case for pension. This request has remained unanswered. It was in 2011 that he sent a legal notice to the respondent, in response to which the respondent

reiterated its stand that the appellant, having resigned from service, was not eligible to claim pension under the Pension Rules. Eventually, the appellant filed a special civil application on 29-3-2012 before the High Court, which was dismissed by the Single Judge vide the judgment dated 5-10-2012 [Asger Ibrahim Amin v. LIC, 2012 SCC OnLine Guj 5379] . The letters patent appeal of the appellant also got dismissed on the grounds of the delay of almost 14 years, as also on merits vide judgment dated 1-3-2013 [Asger Ibrahim Amin v. LIC, 2013 SCC OnLine Guj 661 : (2013) 138 FLR 142] , against which the appellant has approached this Court.

4. As regards the issue of delay in matters pertaining to claims of pension, it has already been opined by this Court in Union of Indiav.Tarsem Singh [Union of India v.Tarsem Singh, (2008) 8 SCC 648 : (2008) 2 SCC (L&S) 765] that in cases of continuing or successive wrongs, delay and laches or limitation will not thwart the claim so long as the claim, if allowed, does not have any adverse repercussions on the settled third-party rights. This Court held: (SCC p. 651, para 7)

> '7.To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal).One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating

to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.'

We respectfully concur with these observations which if extrapolated or applied to the factual matrix of the present case would have the effect of restricting the claim for pension, if otherwise sustainable in law, to three years previous to when it was raised in a judicial forum. Such claims recur month to month and would not stand extinguished on the application of the laws of prescription, merely because the legal remedy pertaining to the time-barred part of it has become unavailable. This is too well entrenched in our jurisprudence, foreclosing any fresh consideration."

(emphasis supplied)

16. In State of M.P. v. Yogendra Shrivastava (2010) 12 SCC 538, the following observations would also be relevant:

"17. The appellants contended that the claims were therefore barred by limitation. It was pointed out that the respondents were paid NPA at a fixed rate as stipulated in the appointment orders and NPA was increased only when it was revised by the government orders from time to time; that the respondents accepted such NPA without protest; and that therefore, they cannot, after periods varying from 5 to 15 years, challenge the fixation of NPA or contend that they are entitled to NPA at a higher rate, that is, 25% of their pay.

18. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply.

Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application." (emphasis supplied)

17. It is seen from the ratio in the above decisions that, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied.

18. In the present case, the writ petitioners are seeking Leave Encashments and they have a right to claim it, in view of the directions of the first respondent which the respondents 2 to 4 are bound to follow.

19. In view of the above reasons, I hold that the claim of the writ petitioner's Association have to be viewed favourably. Accordingly, the writ petition is allowed and the respondents 2 to 4 are directed to extend the benefits of G.O.Ms.488, Finance (Pension) Department dated 12.08.1996 read with conjunction with Government Letter No.37568/BPE/2006 Finance (BPE) Department dated 28.01.2008 to the members of the petitioner's Association as directed by the first respondent from 28.01.2008 itself. Accordingly, the impugned order which directed that the said benefit would be extended only from 15.06.2010, is quashed and the respondents 2 to 4 are directed to implement the benefit of encashment of 90 days Unearned Leave of private affairs to the members of the petitioner's Association with effect from 28.01.2008.

20.Hence, this writ petition is allowed. No costs.

smv

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Secretary,
State of Tamil Nadu,
Finance (BPE) Department,
Secretariat, Fort.St.George,
Chennai-9.

2.Tamil Nadu Tourism Development,
Corporation Limited, rep.by its
General Manager,
No.2, Walajah Road,
Chennai - 600 002.

3.The Chairman and Board of Directors,
Tamil Nadu Tourism Development Corporation Limited
No.2, Walajah Road,
Chennai - 600 002.

4.The Managing Director,
Tamil Nadu Tourism Development Corporation Limited
No.2, Walajah Road,
Chennai - 600 002.

+1cc to Mr.A.Vijayakumar, Advocate, SR.No. 34388
+1cc to Mr.P.Thiagarajan, Advocate, SR.No. 34556

W.P.No.28097 of 2012

Kak(10/04/2019)