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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.11.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.31786, 31787 & 31788 of 2019

1.M.Shanmugam	..Petitioner in WP.31786/2019
2.S.Ashok	..Petitioner in WP.31787/2019
2.G.Ezhilarasi	..Petitioner in WP.31788/2019

Vs

1 The Secretary to Government
Rural Development Department
Secretariat, Chennai 9

2 The Director of Rural Development
and Panchayatraj Department
Panagal Building,
Saidapet, Chennai 15.

3 The District Collector
Salem District, Salem.

...Respondents in all WPs.

Prayer:

Writ Petitions filed under Article 226 of the Constitution of India praying to issue appropriate Writs, Orders or Directions and in particular issue a Writ in the nature of MANDAMUS, directing the respondents to sanction earned leave and unearned leave to their credit in accordance with fundamental rule viz. 86 (a) (i) (ii) (iii) to the petitioners.

For Petitioners : Mr.V.Suthakar

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader.

COMMON ORDER

1. The relief sought for by the writ petitioners is that a direction to the respondents to sanction earned leave and



unearned leave to their credits in accordance with fundamental rule viz 86 (a) (i) (ii) (iii) to the petitioners.

2. Heard the learned counsel appearing for the petitioners and the learned Special Government Pleader appearing for the respondents.

3. The case of the petitioners is that the petitioners were working as Assistant Executive Engineer (Roads & Bridges), Salem, as Block Development Officer at Tharamangalam, Salem District and as Block Development Officer, Panamaathupatti, Panchayat Union, Salem District, respectively and they attained the age of superannuation on 31.05.2016, 31.03.2019 and 31.08.2018 respectively. However, they were not allowed to retire from service on the ground that disciplinary proceedings contemplated under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules are pending. According to the petitioners, since they were not allowed to retire from service at the age of superannuation, they are entitled to receive the earned leave of 240 days as well as unearned leave which is to their credit as well as gratuity. Therefore, they made a representation on 09.09.2019, 19.08.2019 and 16.08.2019 respectively, to the District Collector, Salem, requesting to grant the above said benefits to them. The District Collector in turn has forwarded the representations of the petitioners to the second respondent herein. The grievance of the petitioners is that till date the respondents have not passed any order, granting any earned leave and unearned leave to their credit and gratuity as per the fundamental rule viz., 86 (a) (i) (iii).

4. The learned counsel appearing for the petitioners would submit that though the petitioners had attained the age of superannuation, they were not permitted to retire from service, in view of the disciplinary proceedings pending against them. He would submit that the earned leave salary and gratuity are the property of the petitioners over which the department cannot stay any claim. According to him, these are the benefits which are already occurred and accumulated and the amount of the petitioners which they are entitled to get on attaining the age of superannuation. He would further submit that even assuming that the disciplinary proceedings would result in initiating adverse orders against the petitioners, still they are entitled to get these benefits.

5. The learned Special Government Pleader appearing for the respondents would submit that the petitioners are not entitled for encashment of earned leave and unearned leave as well as gratuity since disciplinary proceedings initiated against them, are pending and they are entitled to get the same only after



finalization of the said disciplinary proceedings.

6. Insofar as getting the benefits of encashment of Leave Salary and Provident Fund is concerned, number of judgments have been passed by this Court and the learned counsel has also relied upon the recent order of this Court made in W.P.(MD)No.4975 of 2018 dated 08.03.2018, where a learned Judge of this Court has held as follows:

"5. This Court has held on more than one occasion, these benefits could not be denied to the person, even if he is ultimately dismissed from service. Hence, a direction is issued to the first respondent to consider the petitioner's representation dated 05.02.2018 regarding the disbursement of general provident fund, special provident fund and earned leave encasement and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order."

7. Following the said order, this Court has also considered a similar case in W.P.(MD)No.7174 of 2018 and passed an order dated 03.04.2018. The relevant portion of the said order would run thus:

"8. The respondents shall consider the request of the petitioner dated 07.01.2018 with regard to the sanction and disbursement of General Provident Fund, Special Provident Fund as well as the Encashment of Earned Leave of the petitioner and pass orders thereon, on merits and in accordance with law, especially, in the light of the aforesaid judgments cited herein, within a period of 6 weeks from the date of receipt of a copy of this order."

8. I have heard the learned Special Government Pleader appearing for the respondents, who may not dispute the legal position as set out above in a number of judgments of this Court.

9. In view of the above, these writ petitions are disposed of with the following direction:

"The petitioners shall be entitled to claim the encashment of Earned leave, Unearned Leave as well as gratuity and therefore the respondents are directed to disburse the same within a period of twelve weeks from the date of receipt of a copy of this order."



10. With this direction, these writ petitions are disposed of.
No costs.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jrs

To

- 1 The Secretary to Government
Rural Development Department
Secretariat , Chennai 600 009.
- 2 The Director of Rural Development
and Panchayatraj Department,
Panagal Building,
Saidapet, Chennai 600 015.
- 3 The District Collector
Salem District, Salem.

+3cc to Mr.V.Suthakar, Advocate, S.R.No.94506, 94507, 94509
+1cc to the Government Pleader, S.R.No.94598

W.P.Nos.31786, 31787 & 31788 of 2019

CA(CO)
CS/10/01/2020