

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.31884 of 2019

V.Jayabal

... Petitioner

Vs.

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

... Respondents

Prayer:-

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to sanction earned leave and unearned leave to his credit in accordance with fundamental rule viz, 86(a) (i) (ii) (iii) to the petitioner.

For Petitioner : Mr.V.Suthakar

For Respondents : Mr.R.S.Selvam,
Government Advocate

O R D E R

By consent, this writ petition is taken up for final disposal at the admission stage itself.

2.The case of the petitioner is that the petitioner was working as Huzur, Sarishtadar, (Development) District Collectorate, Salem. On attaining the age of superannuation on 31.07.2019, the petitioner was not allowed to retire from service on the ground disciplinary proceedings initiated against him was pending against him. In this regard, the petitioner gave a representation on 16.08.2019 to the District Collector,

Salem to sanction earned leave and unearned leave in his credit as per fundamental rule 86(a) (i) (ii) (iii) applicable to the government servant. Thereafter the same was forwarded to the second respondent, but till date the same has been not considered. Hence, the petitioner has filed the present petition.

3. The grievance of the petitioner is that till date the respondents have not passed any order, granting any earned leave and unearned leave to his credit and gratuity as per the fundamental rule viz., 86 (a) (i) (iii).

4. The learned counsel appearing for the petitioner would submit that though the petitioner attained the age of superannuation, he was not permitted to retire from service in view of the disciplinary proceedings pending against him. He would submit that the earned leave salary and gratuity are the property of the petitioner 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 petitioner which he is 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 petitioner, still he is entitled to get these benefits.

5. The learned Government Advocate appearing for the respondents would submit that the petitioner is not entitled for encashment of earned leave and unearned leave as well as gratuity since disciplinary proceedings initiated against him, are pending and he is entitled 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 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 Government Advocate 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, this writ petition is disposed of with the following direction:

"The petitioner 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, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Rural Development Department,
Secretariat, Chennai-600 009

2. The Director of Rural Development &
Panchayatraj Department,
Panagal Building, Saidapet,
Chennai 600 015

3. The District Collector,
Salem District,
Salem.

+lcc to Mr.V.Suthakar, Advocate, S.R.No.94508

+lcc to the Government Pleader, S.R.No.94610

W.P.No.31884 of 2019

MR(CO)
CS/26/12/2019
CS/06/01/2020



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