BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 04.07.2019
Delivered on :31.07.2019
CORAM
THE HONOURABLE MR.JUSTICE **K.RAVICHANDRABAABU**
AND
THE HONOURABLE MR.JUSTICE **SENTHILKUMAR RAMAMOORTHY**
W.A(MD)No.105 of 2019
and
C.M.P(MD)No.748 of 2019

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

2.The Special Commissioner and
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai - 600 005.

3.The District Collector,
Virudhunagar District,
Virudhunagar.

.. Appellants/Respondents

Vs.

K.Palaniyandi

.. Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 10.04.2018 made in W.P(MD)No.7761 of 2018.

Prayer in WP(MD). 7761/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the first respondent i.e., the Secretary to the Government, Revenue Department, Chennai to disburse the Encashment of Leave Salary and Special Provident Fund as per the petitioners representation dated 16.10.2017 based on the earlier orders of the Honble High Court in W.P.No.16098 of 2015 dated 08.06.2015, W.P.(MD)No.1484 of 2016 dated 29.01.2016 and recently in W.P.(MD) No.11791 of 2017 dated 27.06.2017 within a specified time frame that may be fixed by this Court.

For Appellants : Mr.V.R.Shanmuganathan
Special Government Pleader

For Respondent : Mr.S.Visvalingam

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JUDGMENT

K.RAVICHANDRABAABU, J.

This writ appeal is directed against the order made in W.P(MD) No.7761 of 2018 dated 10.04.2018.

2.The appellants are the respondents before the Writ Court. The writ petition was filed for Mandamus directing the first respondent i.e., the Secretary to Government, Revenue Department, Chennai to disburse the Encashment of Leave Salary and Special Provident Fund, as per the petitioner's representation, dated 16.10.2017, based on the earlier orders of the Hon'ble High Court in W.P.No.16098 of 2015 dated 08.06.2015, W.P(MD)No.1484 of 2016 dated 29.01.2016 and recently in W.P(MD)No.11791 of 2017 dated 27.06.2017 within a specified time frame.

3.The Writ Court disposed the writ petition by issuing a direction to the respondents to disburse the Leave Salary as well as Special Provident Fund amount to the writ petitioner within a period of six weeks, by observing that the writ petitioner is entitled to get such amount.

4.The writ petitioner was serving as Assistant Commissioner of Excise at Virudhunagar and his date of superannuation was 30.06.2016. However, he was not allowed to retire on the date of superannuation and on the other hand, he was placed under suspension, by an order, dated 30.06.2016. Though the writ petitioner is getting subsistence allowance and also has received General Provident Fund, he has not received the Encashment of Leave Salary and Special Provident Fund. Therefore, the above writ petition was filed, wherein, the Writ Court passed the order as stated supra.

5.The contention of the appellants in this appeal, is as follows:-

The writ petitioner though attained the age of superannuation on 30.06.2016, he was not permitted to retire, in view of pendency of criminal case against him. Therefore, he was retained in service, by an order, dated 30.06.2016. If a Government Servant is suspended before retirement or permitted to retire without prejudice to the criminal proceedings pending against him, he is entitled for Encashment of Earned Leave amount only after finalization of the disciplinary proceedings and regularization of suspension period. As per Rule 7 of the Tamil Nadu Leave Rules, 1933, a person, who is placed under suspension and not permitted to retire from service on the date of superannuation, is not entitled for Encashment of Earned Leave and Unearned Leave on private affairs. Since the writ petitioner was retained in service as contemplated under Rule 56(1)(c) of the Fundamental

Rules, he is not entitled for his claim, till the disposal of the case filed against him.

6.The learned Special Government Pleader invited our attention to the relevant rules and thus, submitted that the writ petitioner is not entitled for Encashment of Earned Leave and also the amount towards Special Provident Fund.

7.On the other hand, the learned counsel appearing for the respondent/writ petitioner submitted that Earned Leave Salary and Special Provident Fund are the property of the writ petitioner, over which, the department cannot stake any claim. He further submitted that these are the benefits, which are already accrued and accumulated in the account of the petitioner, which he is entitled to get on attaining superannuation. He further pointed out that even assuming that the departmental proceedings would result in dismissal of the writ petitioner, still he is entitled to get these benefits, as such dismissal would only disentitle him from getting pensionary benefits. In support of his contention, the learned counsel relied on a decision reported in **2016-1-LLJ-730 (Mad) [T.Veeravinothan vs. Registrary of Cooperative Societies, Kilpauk, Chennai and others]**, an order passed in **W.A.No.207 of 2016 dated 26.02.2016** by the Division Bench of this Court, an order passed by the Hon'ble Apex Court in **SLP No(s). 16229 of 2016 dated 06.07.2017** confirming the order passed in **W.A.No.207 of 2016 dated 26.02.2016** and another order of the Division Bench of this Court in **W.A(MD)No.1423 of 2018 dated 22.10.2018.**

8.Heard both sides.

9.The point for consideration is as to whether the Writ Court is justified in granting the relief to the writ petitioner in respect of his claim over the Encashment of Leave Salary and Special Provident Fund.

10.There is no dispute to the fact that the writ petitioner on the date of his superannuation, was placed under suspension and consequently, was not permitted to retire. The said exercise was made against the writ petitioner by invoking the Rule 56(1)(c) of the Fundamental Rules. The said Rule and Instruction stated therein read as follows:-

> "(c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension,
> (i) on a charge of misconduct; or
> (ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or
> (iii) against whom an enquiry into grave charges is

contemplated or is pending; or

(iv) against whom a complaint of criminal offence is under investigation or trial.

shall not be permitted by the *appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3 (c) of the Tamil Nadu Police Sub-ordinate service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.

Explanation.—For the purpose of this clause, the expression 'criminal misconduct' shall have the same meaning as in Section 13 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).

Instruction under Rule 56 (1) (c).—Whether a Government servant referred to in clause (c) is fully exonerated or not, he shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of retirement and the salary during that period shall not exceed the pension which has accrued to the Government servant on that date."

11.Perusal of the said instruction would show that a Government Servant referred to in clause 56(1)(c) shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings. It is further seen from the said instruction that during such extension period, the service rights, which have accrued to the Government Servant, shall freeze at the level reached on the date of retirement. It is further contemplated therein that the salary during that period shall not exceed the pension which has accrued to the Government Servant on that date. Here it is pentinent to note that the "service rights" referred to in the said instruction deemed to have been frozen is to be construed not in respect of the monetary benefits already accrued in the account of the Government Servant, such as Earned Leave Salary etc.,. and on the other hand, the term "service rights" referred to therein is to mean as referable to increment, promotion etc. Certainly, "service benefits" already derived cannot be treated at par with expected or anticipated "service rights" to prevent the Government Servant from encashing such leave salary benefits already accrued in his account. It is to be noted at this juncture that the above instruction also contemplates that the salary during that period not to exceed the pension, which has accrued to the Government Servant.

12.At this juncture, it is relevant to note Rule 86(a) of the Fundamental Rules with Explanation, which reads as follows:-

> "86 (a) (i) 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 if the date of retirement or the date of termination of extension of service happens to be a holiday. In 128 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 services if the date of retirement or the date of termination of extension of service happens to be a holiday.
>
> (ii) The benefit of encashment of earned leave at the credit of a Government servant on the date of retirement or on the date of termination of extension of service, as the case may be, shall be subject to a maximum of 240 days and shall be eligible for cash equivalent of full leave salary which shall be based on Pay, Dearness Allowance, House Rent Allowance and City Compensatory Allowance for the entire period of leave at credit.
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> (iii) The benefit of encashment of leave on private affairs on the date of retirement or on the date of termination of extension of service, as the case may be, shall be subject to 50 per cent of the leave on private affairs standing to the credit of the Government servant on such date subject to a maximum of 90 days, with full leave salary in cash which shall be based on Pay, Dearness Allowance, House Rent Allowance and City

Compensatory Allowance. While calculating the leave on private affairs for the above purpose, the fraction of half-a-day shall be rounded off to one day. "

"Explanation—
For the purpose of encashment of earned leave and leave on private affairs provided in this rule, the Government servants of the following categories shall also be eligible :-

(i) cases where the services of a Government servant has been extended in the interest of public service beyond the date of superannuation;

(ii) voluntary or premature retirement;

(iii) where the services of a Government servant are terminated by notice or by payment of pay and allowances in lieu of notice or otherwise in accordance with the terms and conditions of his appointment;

(iv) in the case of death of a Government servant while in service, to the family of the deceased;

(v) in the case of leave preparatory to retirement;

(vi) in cases where the Government servant has been compulsorily retired from service as a measure of punishment under Rule 8 of the Tamil Nadu Civil Services (D&A) Rules.

(vii) in cases where the Government servant has been retired on medical invalidation;

(viii) the Government servants who are discharged owing to the abolition of a permanent post or retrenched due to the abolition of a Government deportment or scheme.

[vide G.O. Ms. No. 345, P & AR (Fr. SPL.), dated 31-7-1990, w.e.f. 29-5-1989.]"

13.Perusal of the above said Rule and the Explanation would show that even a Government Servant, whose service is either terminated by notice or has been compulsorily retired from service as a measure of punishment and where the service of such Government Servant has been extended beyond the date of superannuation, of-course in the interest of public service, is certainly entitled for encashment of leave on private affairs.

14.In other words, it is to be noted that even a person who is dismissed from service, is also entitled to the encashment of leave salary. If that being case, we do not find any logic behind the contention of the appellant as if such amount can be paid only after the termination of the proceedings. In other words, there must be a specific reason with object for retention of the said sum, pending disciplinary proceedings. What the Government Servant is entitled to even at the worst senorio of dismissal of his service, cannot be denied to be paid on his request, merely because, his service is retained.

15.There are two types of monetary benefits payable to a Government Servant on retirement. One type of such benefits, such as Earned Leave, Provident Fund and Special Provident Fund amount, is a benefit already accrued and got credited to the account of the employee, which he is entitled to receive automatically on attaining superannuation. Those amounts become his personal property. It makes no difference even if he is not permitted to retire and a departmental proceedings is initiated against him. In other words, those amounts are derived out of like his "savings" and therefore, the employer cannot stake any claim or impose any restriction as to when such amount could be paid to the employee even after attaining the age of superannuation. In other words, even as per rules, these amounts are payable either on the date of superannuation or on the date of termination of extension of service. Such payment is to be made even to a person dismissed from service. When such being the position, there cannot be any justification on the part of the employer to retain the said sum by citing the pendency of proceedings.

16.The other type of monetary benefit payable to an employee on his retirement, such as pension, gratuity etc., is certainly not liable to be paid automatically on the person attaining superannuation, if the said person is not permitted to retire and on the other hand, proceedings are initiated against him and the same is pending. The outcome of such proceedings will certainly have a bearing on the entitlement to get or liability to pay such amount. Therefore, the person, who attained the age of superannuation and not to allow retire, based on pendency of the disciplinary proceedings, cannot expect the employer to make the payment of pension and gratuity etc., even before the proceedings gets terminated, since such liability is depending upon the outcome of such proceedings.

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.
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> 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.
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> 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.”

24.Therefore, we find the present issue is also certainly similar to the one in the above cases and thus, we find that the order of the Writ Court in granting the relief to the writ petitioner need not be interfered with.

Accordingly, this Writ Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

1.The Secretary to Government,
Revenue Department,
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Chennai – 600 009.

2.The Special Commissioner and
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3.The District Collector,
Virudhunagar District,
Virudhunagar.

+1 CC to Mr.S.VISVALINGAM, Advocate SR-78920.
+1 CC to SPL GP SR-79302.

Judgment made in
W.A(MD)No.105 of 2019
and
C.M.P(MD)No.748 of 2019

31.07.2019

CS(13.08.2019) 12P 6C