BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD)No.903 of 2019
and
CMP(MD)No. 8114 of 2019
Against
WP(MD).No.3484 of 2017

1.The State rep.by
The Principal Secretary,
Agricultural Department,
Fort St.George,
Chennai.

2.The Commissioner of Agriculture,
Chepauk, Chennai – 5.

3.The Joint Director of Agriculture,
District Collectorate Complex,
Ramanathapuram,
Ramanathapuram District. ... Appellants / Respondents

Vs.

M.Vijayaram ... Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.(MD).No.3484 of 2017 dated 28.02.2017.

Prayer in WP(MD). 3484/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents to release the withheld provident fund (GPF), earned leave encashment, extraordinary leave on personal affairs and Gratuity to the petitioner in the light of law laid down by this Court in Judgment reported in W.A.(MD) No.141 of 2016 dated 23.09.2016 confirming the order made in W.P.(MD) No.11133 of 2015 dated 08.07.2015.

For Appellant : Mr.A.K.Baskarapandian
Spl.Government Pleader

For Respondent : Mr.S.Viswalingam

JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the appellants and Mr.S.Viswalingam, learned counsel accepting notice for the respondent and with the consent on either side, the Writ Appeal is taken up for disposal.

2. The appellants, the State of Tamil Nadu and others, are aggrieved by the order and direction issued in W.P.(MD)No.3484 of 2017, dated 28.02.2017 filed by the respondent herein. The respondent prayed for a direction upon the appellants to release the withheld Provident Fund (GPF), Earned Leave Encashment, Extraordinary Leave on Personal Affairs and Gratuity. The respondent relied upon the Judgment of the Division Bench in W.A.(MD)No.141 of 2016, dated 23.09.2016 in support of his claim. The learned Single Bench had disposed of the Writ Petition by directing the appellants to disburse the withheld Provident Fund, Earned Leave Encashment, Extraordinary Leave on Personal Affairs and Gratuity, and held that they are admissible payments to the respondent / writ petitioner, if he is otherwise eligible. There was a further direction to conclude the criminal and departmental proceedings initiated against the respondent as expeditiously as possible and the order passed in the Writ Petition will not preclude the appellants to complete the departmental and criminal proceedings.

3. The appellants cannot be aggrieved by the direction for payment of Provident Fund, Earned Leave Encashment, Extraordinary Leave on Personal Affairs, as these are entitlements of the respondent and similar issue was considered in several cases and latest of which in W.A(MD)No.105 of 2019, dated 31.07.2019. The operative portion of the Judgment reads as follows:-

> "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 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, in turn, 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.”

4. However, the Learned Single Bench had also directed payment of the Gratuity, which cannot be done, since the respondent has not been not permitted to retire and retained in service till the conclusion of criminal proceedings and departmental proceedings. Therefore, to that extent, the appellants are justified in challenging the orders passed in the Writ petition. The learned counsel for the respondent does not dispute the above legal position.

5. In the light of the above, the Writ Appeal, is partly allowed and the order and direction issued in the Writ Petition insofar as it relates to disbursement of withheld Provident Fund, Earned Leave Encashment, Extraordinary Leave on Personal Affairs, is confirmed and the direction to disburse the Gratuity, is set aside. The disbursement shall be effected within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal Secretary,
Agricultural Department,
Fort St.George,
Chennai.

2.The Commissioner of Agriculture,
Chepauk, Chennai - 5.

3.The Joint Director of Agriculture,
District Collectorate Complex,
Ramanathapuram,
Ramanathapuram District.

+1 CC to M/s.GP (SR-85919[F] dated 09/09/2019)

W.A.(MD)No.903 of 2019
06.09.2019

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