



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2019

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.17798 of 2019

and

W.M.P. (MD)No.14264 of 2019

C.Jawahar

... Petitioner

vs.

The General Manager (Finance),
Tamil Nadu Minerals Limited,
Chennai - 5.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent in his proceedings in Rc.No.3843/E1/2019, dated 25.07.2019, quash the same as illegal and consequently, to direct the respondent to sanction and disburse amount of encashment of Earned Leave, within the period that may be stipulated by this Court.

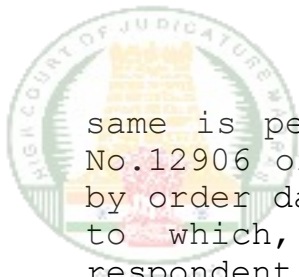
For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates

For Respondent : Mr.VR.Shanmuganathan
Special Government Pleader

ORDER

This Writ Petition has been filed seeking to quash the impugned order passed by the respondent, in his proceedings in Rc.No.3843/E1/2019, dated 25.07.2019, and also a consequential direction to the respondent to sanction and disburse the amount of encashment of Earned Leave, within a time frame to be fixed by this Court.

2.The petitioner while working as Project Officer was suspended from service on 03.09.2012, based on the grave charges framed against him. The respondent issued charge memo dated 10.12.2012, containing three charges. The petitioner filed W.P.(MD)No.2899 of 2013 challenging the said charge memo. The said Writ Petition was dismissed, against which, the petitioner filed Writ Appeal and the



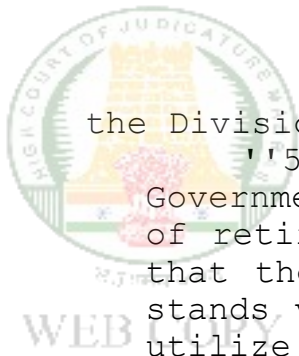
same is pending. In the meanwhile, the petitioner filed W.P.(MD) No.12906 of 2014, challenging the order of suspension. This Court, by order dated 21.12.2018, allowed the said Writ Petition. Pursuant to which, the petitioner was reinstated into service by the respondent, vide his proceedings dated 21.03.2019. While so, the petitioner made a request to the respondent for payment of encashment of earned leave. The respondent, by the impugned order dated 25.07.2019, rejected the said request on the ground that pending regularization of suspension period, the request for sanctioning earned leave surrender cannot be granted. Challenging the said order, the petitioner has come up with the present Writ Petition.

3.The learned counsel appearing for the petitioner contended that the petitioner is entitled to surrender earned leave at any time during his service and even after his retirement. In support of his contention, the learned counsel relied on the judgment of a Division Bench of this Court in case of the State of Tamil Nadu, Rep. by the Secretary to Government and others Vs. V.Mahalingam reported in 2019 (1) Writ L.R. 825 and contended that the petitioner's request for encashment of earned leave cannot be rejected without any statutory provision and prayed for allowing the Writ Petition.

4.The learned Special Government Pleader appearing for the respondent contended that the respondent is unable to conclude the domestic enquiry since the petitioner is not co-operating for conclusion of the enquiry and without passing any order regularising the suspension period, the respondent cannot sanction encashment of earned leave.

5.I have heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent and perused the materials on record.

6.The respondent, by the impugned order, had rejected the request of the petitioner for encashment of earned leave on the ground that without regularising the suspension period, surrender of earned leave cannot be sanctioned. The said contention cannot be acceptable in view of the judgment of the Division Bench of this Court in the case of the State of Tamil Nadu, Rep. by the Secretary to Government and others Vs. V.Mahalingam reported in 2019 (1) Writ L.R. 825. In Paragraph No.5 of the said judgment, the Division Bench of this Court referring the judgment of the Hon'ble Apex Court in the case of State of Jharkhand Vs. Jitendra Kumar Srivastava reported in 2013 (12) SCC 210, has held that leave encashment cannot be taken away without any statutory provision and earned leave is created by Statute and it is an emolument protected as a right to property of the concerned Government Servant under Article 300-A of the Constitution of India. The relevant portion of the judgment of



the Division Bench of this Court, reads as follows:-

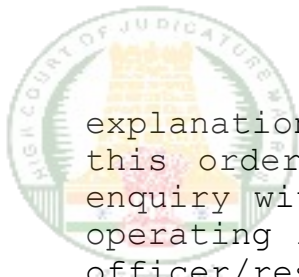
''5. The accumulated leave may be availed by the Government Servant during his tenure of service or at the time of retirement or leaving the employment which obviously means that the right of the Government Servant to receive the same stands vested with him during that period itself which he can utilize 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 or extension of service, as the case may be. The removal of a Government Servant from service as a measure of punishment or conclusion of disciplinary proceedings after extending his service on attaining the age of superannuation for that purpose, would naturally amount to 'termination or 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.''

7.The ratio laid down in the said judgment is squarely applicable to the facts of the present case and the petitioner is entitled to encash the earned leave and monetary benefits. The reason given by the respondent for not sanctioning of encashment of earned leave is not valid.

8.For the above reasons, the impugned order of the respondent, dated 25.07.2019, is quashed. This Writ Petition is allowed as prayed for. No costs. Consequently, connected Miscellaneous Petition is closed.

9.At this juncture, the learned Special Government Pleader reiterated his earlier submission that the petitioner is not co-operating for the domestic enquiry and has not even submitted his explanation.

10.Considering the abovesaid submission of the learned Special Government Pleader, the petitioner is directed to submit his



explanation within 15 days from the date of receipt of a copy of this order. The respondent is directed to complete the domestic enquiry within six months thereafter. If the petitioner is not co-operating in conducting domestic enquiry, it is open to the enquiry officer/respondent to proceed further in accordance with law.

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Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The General Manager (Finance),
Tamil Nadu Minerals Limited,
Chennai - 5.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-86654[F] dated 13/09/2019)

+1 CC to M/s.SPL GP (SR-86937[F] dated 16/09/2019)

W.P. (MD) No.17798 of 2019
13.09.2019

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