



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P(MD)No.23098 of 2017

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S. Jegadesan

... Petitioner

Vs.

1.Secretary to Government,
Revenue Department,
Secretariat,
Fort. St. George,
Chennai - 9.

2.The Principal Secretary and
Commissioner for Revenue Administration,
Ezhilagam, Chepauk,
Chennai - 5.

3.The District Collector,
Theni.

... Respondents

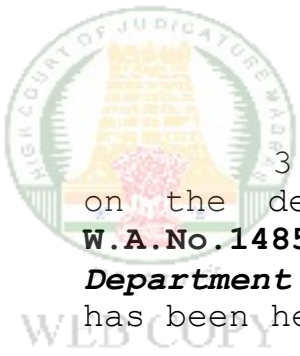
PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to consider the representation of the petitioner dated 29.09.2017 in the light of orders passed in WP(MD).No.2227 of 2017, dated 06.07.2017 by this Court and consequently, direct the respondents to pay the earned leave and unearned leave on private affairs with half of pay for 6 months to him with 12% interest within the time prescribed by this Court.

For Petitioner : Mr. K. Muthumalai
For Respondent : Mr. A. Muthukaruppan
Additional Government Pleader

ORDER

This writ petition has been filed for issuing a direction to the respondents to consider the representation of the petitioner, dated 29.09.2017, in the light of orders passed by this Court WP (MD).No.2227 of 2017, dated 06.07.2017 and consequently, direct the respondents to pay the Earned Leave and Unearned Leave on private affairs with half of pay for 6 months to him with 12% interest within the time frame to be fixed by this Court.

2. According to the petitioner, he has made a representation dated 29.09.2017 to the first respondent to pay the amount for Earned leave and Unearned Leave on Private Affairs, but, so far, the said representation has not been considered by the respondents.



3. The learned counsel appearing for the petitioner relied on the decision of this Court, dated 31.07.2018, passed in **W.A.No.1485 of 2018, (The Secretary to Government, Higher Education Department Vs. Dr.K. Sundaramoorthy)**, wherein at paragraph No.8, it has been held as follows:

"8. In this connection, it would be appropriate to refer to the decision passed by this Court in WA.No.71 of 2017, dated 14.11.2017. In that case, due to certain irregularities in the allotment of plots, the respondent therein was kept under suspension. He has been denied all the terminal benefits. However, he was paid only subsistence allowance upto 30.06.2012 and subsequently, only provisional pension was paid. Thereafter, the authorities, have sanctioned only the General Provident Fund. The request for sanction of Special Provident Fund and Encashment of Earned Leave / Private affairs at his credit, were rejected. The learned counsel appearing for the respondent therein relied upon the decision of Jharkhand High Court in 2007(2) BLJR 2847 (Dr. Dudh Nath Pandey V. The State of Jharkhand), wherein it has been held that the Government has no power to withhold gratuity and pension during the pendency of the departmental proceeding or criminal proceeding. It has also been held that it does not give any power to withhold Leave Encashment at any stage either prior to the proceeding or after conclusion of the proceeding. Relying upon the said decision, this Court ordered to settle the General Provident Fund, Special Provident Fund and Encashment of Earned Leave / Private affairs, within a period of two months."

4. He has also relied on the decision of the Division Bench Judgment of this Court reported in **2019-1-Writ-L.R. 825, (The State of Tamil Nadu, rep. by the Secretary to Government, Public Works Department Vs. V. Mahalingam)** wherein at paragraph Nos. 13 and 14 it has been held as follows:

"13. As explained in detail, we do not find anything contained in any of the statutory provision relied by the learned Special Government Pleader which have the effect of enabling the Government to withhold the encashment of the accumulated earned leave of Government Servant when he attained the age of superannuation during his continuance in service pursuant to disciplinary proceedings or criminal prosecution pending against him at that point of time. Accordingly, we hold that in the absence of an enabling statutory provisions to that effect, an unfair advantage cannot be taken of a rather fortuitous situation by snatching the frugally accumulated earned leave of a



Government Servant in a capricious manner, which remains unencashed at the time of his attaining the age of superannuation.

14. The earlier decisions of this Court in District Collector, Tiruvallur - Vs. T.L.Nagswara Rao (Order dated 13.04.2016 in W.a.No.458 of 2016) and in Chairman Cum Managing Director, TANGEDCO - Vs. P.K. Panchaksharam (Order dated 26.02.2016 in W.A.No.207 of 2016), which has been confirmed by the Hon'ble Supreme Court of India in the Order dated 06.07.2017 in S.L.P(C).No.16229 of 2016m also support the aforesaid view that we have taken."

5. The learned Additional Government Pleader appearing for the respondents would submit that in the light of the aforesaid decisions relied on the by the learned counsel appearing for the petitioner, the representation of the petitioner, dated 29.09.2017, will be considered by the respondents on merits and in accordance with law.

6. I have heard the learned counsel appearing on either side and perused the materials available on record.

7. Considering the facts and circumstances of the case, this Court directs the first respondent to consider the petitioner's representation, dated 29.09.2017, in the light of the aforesaid decisions of this Court cited *supra* and pass appropriate orders, as expeditiously as possible, in any event, not later than 12 weeks from the date of receipt of a copy of this order.

8. With the above direction, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

To

1.Secretary to Government,
Revenue Department,
Secretariat,
Fort. St. George,
Chennai - 9.

2.The Principal Secretary and
Commissioner for Revenue Administration,
Ezhilagam, Chempauk,
Chennai - 5.



3.The District Collector,
Theni.

+1 CC to Mr.K.MUTHUMALAI, Advocate (SR-77372[F] dated 24/07/2019)
+1 CC to SPL GP (SR-77726[F] dated 25/07/2019)

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W.P(MD)No.23098 of 2017
24.07.2019

trp

MK (09.08.2019) 4P 6C