BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.06.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.(MD)Nos.1297, 1302 and 1608 of 2013

S.Kadirvelu ... Petitioner in W.P.(MD)No.1297 of 2013
C.Thangamani ... Petitioner in W.P.(MD)No.1302 of 2013
S.Kamaraj ... Petitioner in W.P.(MD)No.1608 of 2013

-Vs-

The Managing Director,
M/s.Tamil Nadu State Transport
Corporation (Madurai) Limited,
Bye Pass Road, Madurai-625 016. ...Respondent in all Writ Petitions

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent to pay the encashment of unearned leave on private affairs for a period of 90 days.

For Petitioner : Mr.C.Thangamani (in all Writ Petitions)
For Respondent : Mr.J.Senthil Kumaraiah (in all Writ Petitions)

COMMON ORDER

The relief sought for in the present Writ Petitions, is for a direction to direct the respondent to pay the encashment of unearned leave on private affairs for a period of 90 days.

2.Admittedly, the writ petitioners were working in the Managerial cadre in the Tamil Nadu State Transport Corporation, Madurai Limited. With reference to the entitlement of the encashment of unearned leave salary on private affairs, the Hon'ble Division Bench of this Court has passed an order on 27.03.2018 in W.A.(MD)Nos.939 to 944 of 2017 and 326 of 2018. The relevant paragraphs are extracted hereunder:-

> "7.*It is an admitted fact that G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996 issued by the State Government did not extend the benefit of encashment of unearned leave on private affairs at the time of retirement to the State Government undertakings or statutory bodies etc and such benefit was extended to the Government servants and the maximum period was stipulated as 90 days. Thus, by virtue of G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996, the respondents/writ petitioners cannot make a claim for the encashment of the unearned leave on private affairs.*

8.The problem arose on account of a letter, dated 28.01.2008. Admittedly, the Government order cannot superseded by a Government letter, which has been issued by the Secretary of the Government. At the best, it is advisory and not mandatory in which, a clarification was issued that the scheme of encashment of unearned leave on private affairs ordered in G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996 may also be extended of employees of statutory bodies and the State Government undertakings. It appears that a thorough exercise was not undertaken by the Finance Department before issuing the Clarificatory Letter, dated 28.01.2008. Subsequently, it appears that the matter was brought to the knowledge of the Finance Department, the Secretary to the Government of Tamil Nadu and appropriate clarification was issued by the Government on 15.02.2012, whereby, making it clear that if a State Public sector undertaking has such a provision in their Regulations and Service Rules, they may continue to do so. In the said Government letter, in paragraph No.3, the Government specifically took note of the fact that few State Public Sector Undertakings have extended the benefit of encashment of Unearned Leave on Private Affairs to their employees, even though there was no provision in their services rules for extension of such benefit and seek later orders for ratification from the Government. That apart, in paragraph No.4(ii), the Government had specifically clarified that the scheme should not be extended to the employees of State Public Sector Undertakings, whose Service Rules did not contain the provision for encashment of unearned Leave on private affairs.

9.Thus the mistake committed by the Government in issuing a letter, dated 28.01.2008, stood and appropriately clarified by the Finance Department. In the interregnum ie., in the year 2010, the Board of the appellants/Transport Corporation placed the Government Order, dated 28.01.2008 for consideration and the decision taken in the meeting held on 15.06.2010 states "recorded for implementation". The fact remains that though such resolution was passed, the same remained un-implemented and well before that could take place, the Government had clarified that such scheme will not apply to State Public Sector Undertakings whether there is no Service Rule or Regulation to that effect. Therefore, reliance placed on resolution by the learned counsel for the respondents/writ petitioners is self-serving, it is more so, because the respondents/writ petitioners, who have came forward before this Court claiming the benefits are all persons in the Managerial/Supervisory cadre.

10.Insofar as the decision in the case of Tamil Nadu Tata Plantation Corporation Limited is concerned, we find that the case is factually different and taking note of the conduct of the respondents in the said case, the Division Bench had issued the direction. In any event, we find that the correctness of the said decision has been challenged before the Honourable Supreme Court and stay of the Judgment has been granted in S.L.P.No.23510-23513/2016, dated 14.12.2016.

11.As noticed above, there is a separate Service Rule for the employees of the appellants/Transport Corporation. Annexure-II of the common Service Rules deals with Unearned Leave and on perusal of the said Rules, we find that there is no such Leave Rule called as unearned leave on private affairs. Thus, unless and until, such a leave is contemplated under the Service Rule, the question of encashment does not arise. It is to be noted that all the respondents/writ petitioners have all served in the appellants/Transport Corporation and were bound by the Service Rules framed by the Corporation. Therefore, at this distant point of time, after they attained the age of superannuation, the question of claiming such a benefit does not arise.

12.In the result, these Writ Appeals are allowed and the order, dated 02.12.2016 passed in W.P(MD) Nos.2323, 18731, 18732, 18736, 20830, 20831, 20836, 20003, 20004, 21517 and 22882 of 2016 are set aside and the Writ Petitions are dismissed. The other writ petitions, which has been posted along with the Writ Appeals, are also dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed."

3.In view of the judgment of the Hon'ble Division Bench of this Court, the claim of the writ petitioners deserves no merit consideration. Accordingly, these Writ Petitions stand dismissed. No costs.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

Myr

+ 1 CC to Mr.C.Thangamani, Advocate in SR.No.72352

+ 1 CC to Mr.J.Senthil Kumaraiah, Advocate in SR.No.72469

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