

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.32845 of 2004 and
W.P.M.P. No.39751 of 2004

T.S.Ramakrishnan

.. Petitioner

-vs-

1.The SAMEER,
rep. by the Programme Director,
Society for Applied Microwave
Electronics Engineering & Research
Centre for Electromagnetics,
2nd Cross Road, CIT Campus,
Chennai-600 113.

2.The Registrar,
SAMEER,
Society for Applied Microwave,
Electronics Engineering & Research,
I.I.T. Campus, Powai,
Mumbai-400 076.

3.The Secretary,
Department of Information and Technology,
Ministry of Communication & Information
Technology, Electronics Niketan,
No.6, CGO Complex,
New Delhi - 110 003.

.. Respondents

Prayer: Petition filed under Article 226 of the
Constitution of India, praying for the issue of a Writ of
Certiorarified Mandamus calling for the records relating to the
letter No.SMR/ESTT/RTS/1355 dated 30.09.2004 on the file of
second respondent herein and quash the same and direct the
respondents to pay the petitioner sum of Rs.84,088/-.

For Petitioner : Mr.T.Arulraj

For respondents: Mr.A.Kumaraguru for R1 & R2

Mr.T.L.Thirumalaisamy,
Central Government Standing Counsel
for R3

ORDER

Challenging the letter No.SMR/ESTT/RTS/1355 dated 30.09.2004 issued by the Registrar, SAMEER, Society for Applied Microwave, Electronics Engineering & Research, the second respondent herein, the petitioner has come to this Court seeking a direction to the respondents to pay him a sum of Rs.84,088/-.

2.Learned counsel appearing for the petitioner would submit that the petitioner joined the Director of Technical Education, Government of Tamil Nadu on 03.04.1959 and he was appointed as Administration-cum-Accounts Officer. On merger of the said department with the first respondent, namely SAMEER, Society for Applied Microwave, Electronics Engineering & Research, the petitioner was permanently absorbed in the first respondent's society as per the Government Order in G.O. Ms. No.336 Education Department dated 08.03.1988. As per the said G.O., all the terminal benefits including Earned Leave encashment for 137 days and pension were settled. Hence, he became full fledged permanent employee of the SAMEER, where he was working last at the time of his retirement as Chief Administrative and Accounts Officer and drawing a salary of Rs.20,093/- including D.A. and other allowances. At the time of permanent relief from his parent department, the petitioner had 137 days credit of earned leave which was settled in two instalments for a sum of Rs.5,190.65 for 68 days of Earned leave and Rs.5,267/- for balance of 69 days of Earned leave through SAMEER. Therefore, the petitioner was enjoying the value of earned leave for 137 days in his parent department. Once the first respondent had accepted the request of the petitioner for payment of Rs.5,267/- for 69 days, the same cannot be once again re-claimed by the respondents.

3.Counter affidavit has been filed on behalf of respondents 1 and 2. Learned Standing Counsel appearing for respondents 1 and 2 would submit that the petitioner, who was working as Chief Administrative and Accounts Officer, on his superannuation on 31.08.2000, has willfully suppressed the fact of encashment of Earned Leave earlier availed by him from his parent department and accordingly, processed his claim for encashment of 232 days earned leave and got them approved for payment of an amount of Rs.1,52,076/-. Since the petitioner has suppressed the above facts, overpayment to the tune of Rs.45,885/- was made. The petitioner had also agreed to refund the excess payment of Rs.45,885/- and requested the respondent society to adjust the amount due to him towards encashment of half pay leave. As per the request of the petitioner, the respondent society adjusted an amount of Rs.22,267/- being the encashment of half pay leave and directed the petitioner to refund the balance amount of Rs.23,618/- vide letter dated 28.11.2003. Therefore, the claim of the petitioner for payment of Rs.38,544/- is against the rules.

4.It is pertinent to extract para 5(iii) as under:

'5(iii)The fact that an overpayment to the tune of Rs.45,885/- has happened due to the suppression of the full details of encashment of Earned Leave of 69 days, was communicated to him on 29.07.2003 and accepted by him on 27.11.2003. The petitioner had also agreed to refund the excess payment of Rs.45,885/- and requested the respondent society to adjust the amount due to him towards encashment of half pay leave. The respondent society, as per the request of the petitioner adjusted an amount of Rs.22,267/- being the encashment of half pay leave and directed the petitioner to refund the balance amount of Rs.23,618/- (Rs.45,885-Rs.22,267) vide letter dated 28.11.2003.'

5.A perusal of the counter affidavit filed by respondents 1 and 2 would show that there was overpayment to the tune of Rs.45,885/- due to the suppression of the full details of encashment of Earned Leave of 69 days made by the petitioner. Therefore, this Court is unable to entertain the prayer of the petitioner to adjust the amount due to him towards earned leave since he has come to this Court with un-cleaned hands. Accordingly, the writ petition fails and the same is dismissed. Consequently, connected W.P.M.P. is closed. No costs.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

vga

To

1.The Secretary,
Department of Information and Technology,
Ministry of Communication & Information
Technology, Electronics Niketan,
No.6, CGO Complex,
New Delhi - 110 003.

+1cc to Mr.T.L.Thirumalaisamy, Advocate SR.No.23273

W.P. No.32845 of 2004 and
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NRJK (CO)
GMY (10/06/2020)