IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH
WP.No.4379 of 2020

K.Thirugnanasambandam .. Petitioner

- Vs -

1. Tamil Nadu Civil Supplies Corporation,
   Rep. by its Managing Director,
   10, Thambuswamy Road, Chennai-10.

2. Tamil Nadu Civil Supplies Corporation,
   Rep. by its Senior Regional Manager,
   Tuticorin Region,
   Tuticorin-628 008.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the respondents to release the accumulated Earned leave and unearned Leave on Private Affairs, Spl. P.F standing to the petitioner's credit as on 31.08.2016, the date of his retirement from service along with Pension.

For Petitioner : Mr.S.Venkataraman

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader

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O R D E R

This writ petition has been filed for the issue of writ of Mandamus directing the respondents to release the Encashment of accumulated Earned Leave and Unearned Leave on Private Affairs and also the Special Provident Fund standing to the credit of the petitioner.

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2. The petitioner was employed as Quality Inspector in the respondent-Corporation and he was permitted to retire from service on 31.08.2016 pending certain recoveries. According to the petitioner, his terminal benefits like Gratuity, Encashment of Earned Leave is yet to be settled to the petitioner. Therefore, the petitioner has made repeated representations to the respondents to settle these amounts. Since there was no response, the present Writ Petition has been filed before this Court seeking for appropriate directions.

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3. Heard Mr.S.Venkataraman, learned counsel appearing on behalf of the petitioner and Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing on behalf of the respondents.

4. The issue raised by the petitioner is squarely covered by the earlier order passed by this Court in WP.No.1607 of 2020 dated 27.01.2020. The relevant portion of the order is extracted hereunder:-

> "5.Taking into consideration the facts and circumstances of the case and the limited issue that is involved in this case, it will be appropriate to dispose of the writ petition by issuing directions. The issue raised in this writ petition is also covered by a Division Bench judgment of this Court in Secretary to Government, Revenue Department, Secretariat, Chennai-9 and Others .v. K.Palaniyandi reported in [2019 (5) CTC 19]. The relevant portions of the judgment is extracted hereunder:
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> > "19.The learned Single Judge of this Court in a decision reported in T.Veeravinothan v. Registrar of Cooperative Societies, Kilpauk, Chennai and others, 2016 (1) LLJ 730 (Mad) 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."
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> > 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:-
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> > "Challenging the order of the learned Single Judge, by which the retiral benefits were sought to be disbursed to the respondent

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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 law 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,

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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."

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22.The above said decision of the Division Bench was put to challenge before the Apex Court, which, inturn, 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 State of Tamil Nadu v. V. Mahalingam, 2019 WLR 825, 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 http://www.judis.nic.in 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 http://www.judis.nic.in 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

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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".

6. It is clear from the above judgment that Encashment of leave salary, Special Provident Fund and General Provident Fund are considered to be the personal property of the employee and it is payable even in cases where an employee is terminated from service. These monitory benefits cannot be retained by an employer citing pendency of disciplinary proceedings. The facts of the present case will squarely fall within the dictum laid down by the Division Bench."

5. In view of the above, the terminal benefits that have been sought for by the petitioner viz., Encashment of Earned Leave and Unearned Leave on Private Affairs and Special Provident Fund that stands to the credit of the petitioner are treated as the property of the petitioner and he is entitled for the same as a matter of right, irrespective of the result of the proceedings pending against the petitioner. The petitioner has made repeated representations in this regard and there was no response from the respondents.

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6. This Writ Petition is disposed of with a direction to the respondents to pass appropriate orders within a period of four (4) weeks and settle the entire dues against the Encashment of the accumulated Earned Leave and Unearned Leave on Private Affairs and also the Special Provident Fund standing to the credit of the petitioner. The petitioner is directed to make a fresh representation to the respondents along with a copy of this order. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//
Sub Assistant Registrar

KMI
To
1. The Managing Director,
   Tamil Nadu Civil Supplies Corporation,
   10, Thambuswamy Road, Chennai-10.

2. The Senior Regional Manager,
   Tamil Nadu Civil Supplies Corporation,
   Tuticorin Region,
   Tuticorin-628 008.

+1cc to Mr.L.P.Shanmugasundaram , Advocate SR.No. 16182
+1cc to Mr.S.Venkataraman , Advocate SR.No. 15923

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A.SK(02/03/2020)

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