IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 13.03.2020

CORAM:

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.5776 of 2020

O.Kanniappan … Petitioner

Vs.

1.The Chairman-cum-Managing Director,
TANGEDCO,
NPKRR Maaligai,
No.144, Anna Salai,
Chennai-600 002

2.The Chief Engineer(Personnel)
TANGEDCO,
NPKRR Maaligai,
No.144, Anna Salai,
Chennai-600 002

3.The Superintending Engineer,
CEDC/South-1/TANGEDCO,
110 KV SS Complex, K.K.Nagar,
Chennai-600 078 … Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents to consider the petitioner's representation dated 03.01.2020 and direct the respondents to release his earned leave and private affairs accumulated as of date to the petitioner.

For Petitioner : Mr.M.Arvind Subramanyam

For Respondents : Mr.P.R.Dilipkumar

ORDER

The petitioner has filed the above writ petition with the following prayer:

> "To issue a writ of mandamus directing the respondents to consider the petitioner's representation dated 03.01.2020 and direct the respondents to release his earned leave and private affairs accumulated as of date."

2.The case of the petitioner is that he was working as Helper in the respondent Board in Arakkonam Division. While he was working, he was placed under suspension from May 2017, vide order dated 30.05.2017. The suspension was necessitated because the petitioner was involved in a criminal case. Although the petitioner had attained the age of superannuation on 31.07.2018, in view of the pendency of the criminal case, he was not allowed to retire. The Board has passed an order on 23.07.2018 not permitting the petitioner to retire from service.

3.According to the petitioner, he was entitled to certain bona fide benefits due to him like encashment of earned leave and leave on private affairs. According to the petitioner, he was entitled to these benefits regardless of the disciplinary proceedings or any criminal action pending against him. Though the petitioner appears to have submitted a representation on 01.11.2018, since there was no response forthcoming from the respondents, he has recently submitted another representation on 03.01.2020. Since both the representations have not evoked any response, the petitioner is before this Court with this writ petition.

4.Mr.P.R.Dilipkumar, the learned Standing counsel has entered appearance for the respondent Board.

5.The learned counsel appearing for the petitioner would submit that the issue of payment of encashment of earned leave or leave on private affairs is no more res integra even during the pendency of disciplinary proceedings or criminal proceedings, as number of decisions have been rendered by this Court directing the authorities to settle such payments due to the employees. The learned counsel would rely on one such decision of the Division Bench of this Court in the case of 1.The Chairman cum Managing Director, Tamil Nadu Generation and Electricity Distribution Corporation Ltd., and two others vs. P.K.Panchaksharam (W.A.No.207 of 2016, dated 26.02.2016). He would draw the attention of this Court to Paragraph Nos.3 to 5, which are extracted hereunder:

> "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 petition, 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."

6.The learned counsel would further rely on the recent decision of another Division Bench of this Court in the case of The Secretary to Government, Revenue Department and Ors. Vs. K.Palaniyandi (W.A.(MD) No.105 of 2019 dated 31.07.2019), wherein, the Division Bench in extenso has adverted to various decisions on the subject matter and ultimately confirmed the relief granted by the learned Single Judge of this Court. In fact, the Division Bench, in Paragraph No.23, has referred to the observation of the earlier Division Bench and ultimately confirmed the order passed by the learned Single Judge. Paragraph Nos.23 and 24 of the Division Bench judgment are extracted hereunder:

> "23.In a recent decision of the Division Bench reported in MANU/TN/3139/2019:2019 Writ L.R.825(State of Tamil nadu vs. Mahalingam), the same issue was considered and it has been observed at Paragraph No.5 as follows:
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> "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 o 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 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 (MANU/SC/0801/2013: (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 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."

7.The learned counsel for the respondent Board would not have any objections for disposing of the writ petition in terms of the Rulings of this Court.

8.Accordingly, the writ petition is disposed of directing the respondents to consider and pass appropriate orders in response to the representations of the petitioner dated 01.11.2018 and 03.01.2020 on merits and in accordance with law, in the light of the judgment of the Division Bench, as extracted supra. The respondents are directed to pass orders within a period of four weeks from the date of receipt of copy of this order. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

msk/jbm

To

1.The Chairman-cum-Managing Director,
TANGEDCO, NPKRR Maaligai,
No.144, Anna Salai, Chennai-600 002

2.The Chief Engineer(Personnel)
TANGEDCO, NPKRR Maaligai,
No.144, Anna Salai, Chennai-600 002

3.The Superintending Engineer,
CEDC/South-1/TANGEDCO,
110 KV SS Complex, K.K.Nagar,
Chennai-600 078

+1cc to Mr.M.Arvind Subramaniam, Advocate, S.R.No. 22643
+1cc to Mr.P.R.Dhilipkumar, Advocate, S.R.No. 22954

W.P.No.5776 of 2020

VBA (CO)

GN(26/06/2020)