

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :22.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.30077 OF 2016

AND

W.M.P. NO. 26063 OF 2016

S.Ayyanan

.. Petitioner

- Vs -

1. The State of Tamil Nadu
rep. By the Secretary to Govt.
Public Works Department
Fort St. George, Chennai 600 009.

2. The Engineer-in-Chief (Buildings)
& Chief Engineer (Buildings)
Chennai Region & Chief Engineer (General)
Public Works Department
Chepauk, Chennai 600 005.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the entire records pertaining to the order passed by the 2nd respondent vide his proceeding No.Letter NO.CII (3)/2003/2006-182 dated 20.2.14 quash the same as illegal, arbitrary, unreasonable and being violative of rules and principles of natural justice and thereby direct the respondents to disburse the earned leave encashment for 330 days (240 + 90) to the petitioner with interest at the rate of 18% p.a. from the date of termination of the extended service on 23.1.2012.

For Petitioner : Mr. A.R.Suresh

For Respondents: Mr. A.N.Thambidurai, Spl. GP

ORDER

It is the case of the petitioner that while working as Assistant Executive Engineer in the Public Works Department, Chennai, he was placed under suspension on 30.05.2006. The petitioner, on attaining the age of superannuation on 31.05.2006, in view of the pendency of disciplinary proceedings, was not permitted to retire and a charge memo under Rule 17(b)

of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, was issued on the same day. After enquiry, the Petitioner was imposed with the punishment of removal from service vide G.O. (D) No. 508, Public Works (E1) Department dated 03.12.2013. Further, the Petitioner and some other officials, who had been prosecuted in criminal proceedings in Special C.C. No. 8 of 2011, were acquitted by order dated 27.04.2016. Thereafter, the Petitioner made a representation dated 03.02.2014 to the 1st Respondent for the encashment of his earned leave citing the decision of the Hon'ble Supreme Court in State of Jharkhand -vs- Jitendra Kumar Srivastava [(2013) 12 SCC 210]. The 2nd Respondent, vide proceedings No. CII(3)/2003/2006-181 dated 20.02.2014, rejected the said claim on the ground that encashment of earned leave provided in Rule 86 of the Fundamental Rules is not applicable for such of those persons, who were punished with removal from service. Aggrieved by the said rejection, the present petition has been preferred.

2. When the matter is taken up, learned counsel appearing for the petitioner submitted that the petitioner, along with other persons faced departmental enquiry and the petitioner along with one other person were visited with punishment. While the petitioner filed the present writ petition, the other person filed W.P.No.30076/2016, which was allowed by the learned single Judge of this Court, which was taken in appeal and the Division Bench confirmed the order of the learned single Judge in W.A. No.1285/19 and, therefore, similar treatment be meted out to the petitioner herein.

3. Learned Special Government Pleader appearing for the respondents acceded to the said submission and submitted that the petition be allowed in terms with the order passed in W.P. No.30076/16 as affirmed in W.A. No.1285/19.

4. This Court paid its attention to the submissions advanced by the learned counsel on either side and perused the decision on which reliance has been placed by the learned counsel for the petitioner.

5. As against similar punishment, W.P No.30076/16 was filed by the petitioner therein, which culminated in the allowing of the said petition by the learned single Judge and on appeal in W.A. No.1285/19, the same was affirmed by the Division Bench of this Court, vide order dated 10.04.2019. The relevant portion of the said order is quoted hereunder for ready reference :-

"13. As explained in detail, we do not find anything contained in any of the statutory provisions 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 a 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. Nageswara 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 2016, also support the aforesaid view that we have taken."

6. In view of the order passed by the Division Bench of this Court, in favour of the petitioner therein, and the petitioner herein, being a person similarly placed, is also entitled to the relief as sought for. Accordingly, this writ petition is allowed and the respondents are directed to calculate the amount towards leave encashment due to the petitioner and disburse the same within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary to Govt.
Public Works Department
Government of Tamil Nadu
Fort St. George, Chennai 600 009.

2. The Engineer-in-Chief (Buildings)
& Chief Engineer (Buildings)
Chennai Region & Chief Engineer (General)
Public Works Department
Chepauk, Chennai 600 005.

+1 cc to M/s.A.R.Suresh, Advocate Sr.No. 30821
+1 cc to The Government Pleader, Sr.No. 31130

W.P. NO.30077 OF 2016

VSNI (CO)
RMP (07/10/2020)



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