

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 13.02.2020

Order Pronounced on : 28.02.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 19126 of 2017

J.Bernard Philip Leo

..Petitioner

Vs

The Assistant Director of Survey
& Land Records,
Coimbatore - 641018

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in Na.Ka.A6/6034/2016 dated 09.11.2016 on the file of the respondent and quash the same and further directing the respondent to pay the cash equivalent of the petitioner's earned leave at credit and 50% of Unearned Leave on Private Affairs at the credit of the petitioner on the date of his removal from service with interest at the rate of 18% p.a upto the date of disbursement or to issue any other suitable direction to the respondent, within the time limit as fixed by this Court.

For Petitioner : Mr. R.Baskara Doss

For Respondent : Mr.J.Ramesh, AGP

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O R D E R

The prayer sought for in the Writ Petition is to call for the records relating to the proceedings in Na.Ka.A6/6034/2016 dated 09.11.2016 on the file of the respondent and quash the same and further directing the respondent to pay the cash equivalent of the petitioner's earned leave at credit and 50% of Unearned Leave on Private Affairs at the credit of the petitioner on the date of his

removal from service with interest at the rate of 18% p.a upto the date of disbursement or to issue any other suitable direction to the respondent, within the time limit as fixed by this Court.

2. Brief facts leading to the writ petition is that the writ petitioner was appointed as Typist in the respondent's office on 21.03.1983 and completed the period of probation on 24.06.1996. He was removed from service by the respondent vide proceedings in Na.Ka. 3073/2012 dated 20.09.2013, for the alleged charge that he got second marriage during the lifetime of first wife and violated Rule 19(1) (i) of the Tamil Nadu Government Servants Conduct Rules. Challenging the aforesaid order, he filed writ petition before this Court for grant of leave salary and the case equivalent of the petitioner's earned leave at credit and 50% of unearned leave on private affairs at credit of the petitioner on the date of removal from service. This Court had directed the respondents to consider and pass orders. But the respondent without considering the same, had passed impugned order dated rejecting the claim made by the petitioner, which according to the petitioner is perverse, illegal. Hence this writ petition.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent and perused the documents available on record.

4. The learned counsel for the petitioner submitted that the order of removal from service is a capital punishment for the private and his personal matrimonial issue. The jurisdictional family court has also passed Decree and Order dated 23.07.2014 made in DOP No. 629/2012 dissolving the marriage of the petitioner held on 26.05.1982 with one J.Mary Josephine @ Anita, hence the second marriage of the petitioner is valid in the eye of law. The learned counsel further submitted that the petitioner had served 30 ½ years continuously in the respondent department and he would have reached the age of superannuation on the Afternoon of 30.04.2015. In view of the premature service termination by way of removal from service, his accrued terminal benefits such as Encashment of Earned Leave and Unearned Leave on Private Affairs at his credit are not drawn and paid to him inspite of repeated requests .

5.The learned counsel for the petitioner further submitted that there were 218 days of earned leave; and 180 days of Un-earned leave on private affairs at the petitioner's credit on the date of his removal from service i.e upto 20.09.2013. The leave encashment would arrive at Rs.3,29,416 (approximately) (i.e $218+180/2 = 308$ days. Last Pay drawn @ Rs. 32086 x $308/30 = \text{Rs.}3,29,416/-$) on the basis of last pay drawn as on 31.08.2013. Moreover, the periodical annual increment due to him with effect from 01.04.2013 was also not sanctioned and paid to him.

6. To support his contentions, the learned counsel has produced the following judgments of this Court;

(i). W.A(MD).No.903 of 2013, dated 06.09.2019 in the case of The State rep. by the Principal Secretary, Agriculture Department, Chennai & 2 Others Vs. M.Vijayaram.

(ii). W.A. No. 2767 of 2018, dated 17.12.2018 in the case of The Superintending Engineer, TANGEDCO, K.K. Nagar, Chennai Vs.T.Datchinamurthy.

(iii). W.P. No. 24968 of 2013, dated 08.11.2019 in the case of J. Padmanaban Vs.The Managing Director, The Tail Nadu Co-operative Milk Producers Federation Limited, Madhavaram, Chennai & 3 Others.

(iv). W.P (MD).No. 14419 of 2016, dated 25.07.2019 in the case of AK.Chellamuthu Vs. The District Collector, Dindigul District, Dindigul & 3 Others.

(v).WP (MD). No. 5051 of 2019, dated 30.09.2019 in the case of A.Manibalan Vs. The District Collector, Trichy District, Trichy & another.

7. On the other hand, the learned Additional Government Pleader submitted that the petitioner was removed from service for violating the Tamil Nadu Government Servants Conduct Rules 19(1)(i), as per Proceedings in Na.Ka.3073/2012 dated 20.09.2013, married for second time. Only after the punishment was given, the jurisdictional family court has passed order dated 23.07.2014 dissolving his first marriage with J.Mary Josephine @ Anitha. Therefore as per Rules, the benefits which were due to him on superannuation could not be given.

8. The learned Additional Government Pleader further submitted that even though the petitioner has 218 days earned leave and 180 days of unearned leave on private affairs at his credit, since he was removed from government

service, he is not entitled for the said benefits as Rule 21 of the Tamil Nadu Pension Rules 1978. Likewise, the petitioner is also not entitled to claim final surrender leave salary. Even though, the petitioner has relied upon the judgment made in W.P. (MD) 1484 /2016, dated 29.01.2016 and W.A. No. 207 of 2016, the said judgments are not applicable to the petitioner herein, since the respondents in the said cases are Registrar of Co-operative Society and Electricity Board for whom the Tamil Nadu Pension Rules 1978 are not applicable. Hence prayed to dismissal of the writ petition.

9. Admittedly, there is no dispute that the petitioner was appointed as Typist in the respondent's Office on 21.03.1983 and his service was regularised with effect from 25.06.1984. Charges were framed against the petitioner alleging that he got second marriage during the life time of first wife, violating Rule 19(1)(i) of Tamil Nadu Government Service Conduct Rules. Subsequently, he was removed from service on 20.09.2013. The petitioner has challenged his order of removal from service before this Court in W.P. No.29047 of 2016 which is pending. In view of the same, his accrued terminal benefits such as Encashment of Earned Leave and Unearned Leave on Private Affairs at his credit cannot be denied, as these are entitlements of the petitioner and the similar issue was considered by this Court in several cases.

10. The Hon'ble Division Bench of this Court in W.A(MD) No. 903 of 2019, dated 06.09.2019 by observing the decisions made on the similar issued, has passed order directing the respondents therein to disburse the Earned Leave Encashment, Extraordinary Leave on Personal Affairs. The relevant portion is extracted hereunder;

3. The appellants cannot be aggrieved by the direction for payment of Provident Fund, Earned Leave Encashment, Extraordinary Leave on Personal Affairs, as these are entitlements of the respondent and similar issue was considered in several cases and latest of which in W.A(MD) No.105 of 2019, dated 31.07.2019. The operative portion of the Judgment reads as follows:-

"18.It is to be noted at this juncture that there is no total prohibition or denial of the benefit sought for by the writ petitioner in any of the provisions made under the relevant rules. It is only a time of disbursement of such benefit is stated. Even as per the rules, these benefits

sought by the writ petitioner become payable automatic at the relevant point of time. Therefore, when the entitlement for such payment is not in question and only the time of disbursement is postponed under a given circumstance, especially when the retention of those benefits is not having a bearing on any eventuality, the Court can interfere and direct such payment even before the relevant time for disbursement of such payment, when the beneficiary seeks to get the same immediately. When the entitlement is not in dispute, it makes no difference whether it is paid at the request of the beneficiary or at a latter date viz., relevant time, at which, it is liable to be paid.

19. The learned Single Judge of this Court in a decision reported in 2016(1) LLJ 730 (Mad) (cited supra) 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.

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:-

Challenging the order of the learned Single Judge, by which the retiral benefits were sought to be disbursed to the respondent 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 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 the light of the above, the Writ Appeal, is partly allowed and the order and direction

issued in the Writ Petition insofar as it relates to disbursement of withheld Provident Fund, Earned Leave Encashment, Extraordinary Leave on Personal Affairs, is confirmed and the direction to disburse the Gratuity, is set aside. The disbursement shall be effected within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed. "

11. A reading of the above judgment would show that it has been repeatedly and consistently held by the Supreme Court, this Court and Punjab and Haryana Court, unless the rules did not permit, leave encashment amount payable to an employee cannot be withheld.

12. In view of the aforesaid decisions, this Court is of the opinion that the writ petitioner is entitled to avail encashment of Earned Leave and Unearned Leave on Private Affairs. With regard to the other claim made by the petitioner that he is entitled for leave salary for 20 days i.e from 01.09.2013 to 20.09.2013, it is stated in the impugned order dated 09.11.2016, the said amount has been adjusted towards debts due to the respondent by the petitioner and settled the balance amount to the petitioner,

13. In the result, the impugned order dated 09.11.2016 passed by the respondent is quashed insofar it relates to withholding the encashment of Earned Leave and Unearned Leave on Private Affairs accrued at the credit of the petitioner. Accordingly, the respondent is directed to disburse the amount of encashment of Earned Leave and Unearned Leave on Private Affairs available at the petitioner's credit on the date of his removal from service i.e upto 20.09.2013 along with interest at the rate of 9% per annum, within a period of eight weeks from the date of receipt of a copy of this order.

With above directions, the Writ Petition is partly allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Assistant Director of Survey
& Land Records,
Coimbatore - 641018.

+1cc to Mr.R.Baskaaradoss, Advocate, S.R.No.17412

+1cc to the Government Pleader, S.R.No.18263

W.P.No. 19126 of 2017

AD(CO)
CB(28/07/2020)



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