IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.06.2021

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.No.530 of 2021
and C.M.P.No.2065 of 2021

The Assistant Director of
Survey and Land Records,
Coimbatore District – 641 018. ...Appellant

vs

J.Bernard Philip Leo ...Respondent

Prayer: Writ Appeal filed under clause 15 of the Letters Patent Act against the final order dated 28.02.2020, made in W.P. No.19126 of 2017.

W.P. No.19126 of 2017:-

Writ peition 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 petitioners 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 Appellant	:	Mr.C.Jayaprakash Government Advocate
For Respondent	:	Mr.R.Baskaradoss

JUDGMENT
(delivered by Krishnan Ramasamy,J.,)

This is an intra-Court appeal filed against the order passed by the learned Single Judge in W.P.No.19126 of 2017 dated 28.02.2020.

2.The respondent in this writ appeal is the petitioner in the writ petition, under challenge. The writ petition was filed to issue the 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 to direct the respondent to pay the cash equivalent of the petitioner's Earned leave at credit and 50% of the Unearned leave on Private Affairs at the credit of the petitioner on the date of his removal from service with the interest at the rate of 18% p.a upto the date of disbursement.

3.The appellant herein passed the impugned order dated 09.11.2016, in Na.Ka.A6/6034/2016, wherein, the request of the writ petitioner for the payment of leave salary for encashment of Earned leave and 50% of the leave salary for Unearned leave on Private Affairs was rejected for the reason that as per Rule 21 of Tamil Nadu Pension Rules, 1978, removal or dismissal of Government Servant from a post or service entails forfeiture of his/her past service.

4.However, the learned Single Judge after hearing both the parties, negatived the contention of the appellant and allowed the writ petition, whereby, quashed the impugned order dated 09.11.2016 in Na.Ka.A6/6034/2016 and directed the appellant to disburse the amount of encashment of Earned Leave and Unearned Leave on Private Affairs available at the respondent'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 that order. Aggrieved over the same, the appellant has preferred the present appeal.

5.Mr.C.Jayaprakash, learned Government Advocate for the appellant submitted that as per Rule 21 of the Tamil Nadu Pension Rules, 1978, if any employee is removed or dismissed from service, his/her past service would be forfeited. In the present case, since the respondent was terminated from service on 20.09.2013, he lost his right of encashment of Earned leave and Unearned leave on Private Affairs, as the same was fortified in view of the Rule 21 of the Tamil Nadu Pension Rules,1978. Therefore, he submitted that the order dated 28.02.2020, made in W.P.No.19126 of 2017, passed by the learned Single Judge is liable to be set aside and prayed to allow the appeal.

6.Per Contra, the learned counsel appearing for the respondent/writ petitioner would submit that the encashment of Earned leave and Unearned leave on Private Affairs accrued to the credit of the respondent/writ petitioner are the properties of the respondent, who earned the same during the tenure of his employment. Therefore, the same cannot be withheld by the appellant by referring Rule 21 of the Tamil Nadu Pension Rules,

1978. This rule would apply only prospectively from the date of termination.

7.The learned counsel further submitted that the Hon'ble Madurai Bench of this Court in a similar issue in W.A.(MD). No.903 of 2019 dated 06.09.2019, held that the termination of an employee will not deprive his/her right of encashment of Earned leave and Unearned leave on Private Affairs, which are the properties of the employee, thus the employee is entitled for the same. Therefore, he submitted that there is no merit in the present writ appeal and prayed for dismissal.

8.Heard the learned Government Advocate for the appellant and the learned counsel appearing for the respondent.

9.Before going into the main issue, it would be useful to extract the Rule 86(a)(i) of the Tamil Nadu Government Fundamental Rules:

> "86 (a) (i) Leave at the credit of a Government servant in his leave account, other than earned leave and leave on private affairs shall lapse on the date of retirement or on the date of termination of the extension of service, as the case may be. The competent authority (leave sanctioning authority) shall suo motu draw and disburse the cash benefits of encashment of earned leave and leave on private affairs at the credit of the Government servants in Groups B,C and D without formal sanction orders on the date of retirement or on the date of termination of the extension of service, as the case may be, or on the next working day, following the date of retirement or the date of termination of extension of service if the date of retirement or the date of termination of extension of service happens to be a holiday. In respect of Group A officers, the Accountant General or Pay and Accounts Officer, as the case may be, shall suo motu issue the pay slips for encashment of earned leave and leave on private affairs, as aforesaid, at the credit of the Government servants without formal sanction orders, on the date of retirement or on the date of termination of the extension of service, as the case may be, or on the next working day, following the date of retirement or the date of termination of extension of services if the date of retirement or the date of termination of extension of service happens to be a holiday.
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> (ii) The benefit of encashment of earned leave at the credit of a Government servant on the date of

retirement or on the date of termination of extension of service, as the case may be, shall be subject to a maximum of 240 days and shall be eligible for cash equivalent of full leave salary which shall be based on Pay, Dearness Allowance, House Rent Allowance and City Compensatory Allowance for the entire period of leave at credit.

(iii) The benefit of encashment of leave on private affairs on the date of retirement or on the date of termination of extension of service, as the case may be, shall be subject to 50 per cent of the leave on private affairs standing to the credit of the Government servant on such date subject to a maximum of 90 days, with full leave salary in cash which shall be based on Pay, Dearness Allowance, House Rent Allowance and City Compensatory Allowance. While calculating the leave on private affairs for the above purpose, the fraction of half-a-day shall be rounded off to one day. " ;
(G.O.Ms.No.324 P&AR (FR.IV) dt. 18.8..2004 - w.e.f. 1.4..2003)

Explanation—
For the purpose of encashment of earned leave and leave on private affairs provided in this rule, the Government servants of the following categories shall also be eligible :-

(i) cases where the services of a Government servant has been extended in the interest of public service beyond the date of superannuation;

(ii) voluntary or premature retirement;

(iii) where the services of a Government servant are terminated by notice or by payment of pay and allowances in lieu of notice or otherwise in accordance with the terms and conditions of his appointment;

(iv) in the case of death of a Government servant while in service, to the family of the deceased;

(v) in the case of leave preparatory to retirement;

(vi) in cases where the Government servant has been compulsorily retired from service as a measure of punishment under Rule 8 of the Tamil Nadu Civil Services (D&A) Rules.

(vii) in cases where the Government servant has been retired on medical invalidation;

(viii) the Government servants who are discharged owing to the abolition of a permanent post

or retrenched due to the abolition of a Government deportment or scheme.
[vide G.O. Ms. No. 345, P & AR (Fr. SPL.), dated 31-7-1990, w.e.f. 29-5-1989.]"

10.A perusal of explanation (iii) of the Rule 86 (a) of the Tamil Nadu Government Fundamental Rules would show that, the Government Servant whose service was terminated by notice or by payment of pay and allowance in lieu notice or otherwise in accordance with law with terms and conditions applied, is eligible for encashment of Earned Leave on Private Affairs. In the present case, the petitioner was appointed on 21.03.1983; his service was regularised on 24.06.1996 and he was removed from service on 20.09.2013. In terms of the explanation (iii) provided under Rule 86 (a) of the Tamil Nadu Fundamental Rules, no doubt the termination of the respondent would not affect his encashment of Earned leave and Un-Earned leave on Private Affairs.

11.It is also relevant to extract Rule 21 of the Tamil Nadu Pensions Rules, 1978, for better appreciation:

> "21.Forfeiture of service on dismissal or removal:- Dismissal or removal of Government servant from a service or post entails forfeiture of his past service."

As far as Rule 21 of the Tamil Nadu Pensions Rules, 1978 is concerned, this rule would apply only for the benefits, which are going to be accured in the post termination benefits, for which, the employee's past service would be forfeited. At the same time, the leave earned by the employee during his tenure of employment, is the property of the employee and encashment of the same cannot be deprived.

12.As stated earlier, in terms of explanation (iii) of the Rule 86 (a) of the Tamil Nadu fundamental Rule, the respondent is entitled for the encashment of Earned leave and Un-Earned leave on Private Affairs even after the termination of his service. Therefore, the appellant is liable to return the entitlement of the respondent, as such, the respondent made a claim only for the encashment of Earned leave and Un-Earned leave on Private Affairs.

13.The Co-ordinate Division Bench of this Court in W.A(MD). No.903 of 2019, dated 06.09.2019 has held as follows:

> "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.
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> 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:-
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> > "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.””

14.A perusal of the above order would also show that, the encashment of Earned leave and Unearned leave on Private Affairs arrived at the credit of the employee would be an asset and certainly the owner of the asset/property is entitled for the same. As far as the present case is concerned, the respondent is certainly entitled for the encashment of Earned leave and Unearned leave on Private Affairs since the same is the property of the respondent.

15.In view of the above, we do not find any fault in the decision making process of the learned Single Judge, when the impugned order dated 09.11.2016 in Na.Ka.A6/6034/2016, in the writ petition came up for Judicial Review. Thus, we do not find any merit in the present writ appeal and the same is liable to be dismissed.

16.In the result, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Director 06
   Survey and Land Records
   Coimbatore - 641 018

+1cc to Mr.R.Baskara Doss, Advocate, S.R.No.30365
+1cc to the Government Pleader,High Court, Madras S.R.No.30387

W.A.No.530 of 2021
and C.M.P.No.2065 of 2021

AK-II(CO)
RGA(30/07/2021)