

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

WRIT APPEAL NO.1951 OF 2019

1. The Director of Town Panchayats
Kuralagam
Chennai - 600 108
 2. The District Collector
Dharmapuri
Dharmapuri District
 3. The Assistant Director of Town Panchayats
Dharmapuri Zone
Dharmapuri District
- ... Appellants

Versus

C. Deivanayagam ... Respondent

Appeal filed under Clause 15 of Letters Patent against the Order dated 27.11.2018 passed in WP.No.42100 of 2016 on the file of this Court.

WP.No.42100 of 2016:-

It is humbly prayed that this Hon'ble Court may pleased to issue a Writ of Certiorarified Mandamus or any other appropriate Writ or order or direction in the nature of a Calling for the records of the 3rd respondent in Na.Ka.No.2173/2016/TP3 dated 14.10.2016 and quash the same and consequently direct the respondents to forthwith pay the encashment of earned leave benefits for a period of 240 days and encashment of leave on private affairs benefits for a period of 90 days.

For Appellants : Mrs.A.Srijayanthi
Special Government Pleader

For Respondent : Mr.N.Kolandaivelu

JUDGMENT

R.SUBBIAH, J

This writ appeal has been filed as against the order passed by the learned single Judge dated 27.11.2018 in WP No. 42100 of 2016 allowing the writ petition filed by the respondent herein.

2.The respondent has filed the aforesaid WP No. 42100 of 2016 praying to issue a Writ of Certiorarified Mandamus calling for the records of the third appellant herein in Na.Ka.No.2173/2016/TP3 dated 14.10.2016, quash the same and consequently direct the appellants herein to forthwith pay the encashment of earned leave benefits for a period of 240 days and encashment of leave on private affairs for a period of 90 days.

3. The case of the respondent is that he was initially appointed as Junior Assistant in the year 1973. He was thereafter promoted as Assistant in the year 1992, as Executive Officer Grade-I in the year 1995, as Selection Grade Executive Officer in the year 2000 and as Assistant Director in the year 2009. While the respondent was working as Assistant Director of Town Panchayat, Dharmapuri Zone, he was placed under suspension on 30.07.2014 and not permitted to retire from service on 31.07.2014 by citing the pendency of three charge memos issued to him on the basis of audit objections. According to the respondent, as per FR 8 (a) (i) he is entitled to receive the enhancement of earned leave benefits for a period of 240 days and encashment of leave on private affairs for 90 days. However, these benefits are denied to him by citing the pendency of the disciplinary proceedings. According to the respondent, out of the three charge memos issued to him, the charge memo dated 23.07.2014 was dropped by issuing G.O.Ms.No.458, Municipal Administration and Water Supply Department dated 29.11.2017 and the charge memo dated 06.02.2013 was dropped on the basis of the Audit Objection issued by the Regional Director, Local Audit, Tiruchirapalli and the same is pending compliance before the Assistant Director of Town Panchayat, Dharmapuri Zone, Dharmapuri. Even assuming if the charges against the respondent are proved, it has got nothing to do with the disbursement of earned leave and encashment of leave on private affairs. The respondent therefore submitted a representation to the appellants for disbursement of earned leave for 240 days and 90 days leave on private affairs. However, it was rejected by the third respondent on 14.10.2016 on the ground charge memo is still pending. Therefore, assailing the order of rejection dated 14.10.2016 of the third appellant, the respondent has filed the aforesaid writ petition.

4. The learned single Judge, after hearing both sides, quashed the order of rejection of the third appellant by placing reliance on the decision of the Division Bench of this Court in the Judgment dated 18.01.2016 in W.A. No. 1700 of 2015. Consequently, the learned single Judge directed the appellants to settle the Earned Leave Encashment benefits and Encashment of leave on private affairs to the respondent within a period of six weeks.

5. The learned Special Government Pleader for the appellants would submit that during the period of suspension, the respondent is only entitled for subsistence allowance. Further, the allegation against the respondent is that he misappropriated huge amount and caused loss to the exchequer. The learned Special Government Pleader would further contend that as per Government Letter No.61612/FR III/1990-1, Personnel and Administrative Reforms Department dated 17.09.1990, if a government servant is suspended and not permitted to retire from servant, the encashment of earned leave will be disbursed only after finalisation of the disciplinary proceedings and after regularising the period of his suspension. In the present case, the charge levelled against the appellant was based on the audit objection to the effect that the respondent has misappropriated a sum of Rs.70,32,346/-. The learned single Judge, without considering the nature of charges against the respondent has allowed the writ petition filed by him and directed the appellants to disburse him the earned leave benefits. The learned Special Government Pleader therefore prayed for allowing the Writ Appeal.

6. Per contra, the learned counsel for the respondent would contend that it is incorrect to state that the respondent misappropriated amount. On the other hand, the charge against the respondent is based on audit objection. As per the Fundamental Rules, the earned leave for 240 days and leave on private affairs for 90 days have to be disbursed to the respondent notwithstanding the pendency of the charge memo. The learned single Judge, by placing reliance on FR 8 (a) (i) as well as the decision of the Division Bench of this Court has rightly allowed the writ petition filed by the respondent herein and he prayed for dismissal of the writ appeal.

7. We have heard the counsel for both sides and perused the materials placed on record. The respondent was not allowed to retire from service on attaining the age of retirement. Rather, his service was retained beyond the date of his retirement by citing the pendency of three charge memos and to facilitate conduct of departmental enquiry. The respondent has not questioned the validity of the charge memos at all. According to him, he is ready to face the departmental

proceedings. However, notwithstanding the pendency of departmental proceedings, he seeks for disbursement of earned leave and encashment of leave on private affairs. Such a request made by the respondent was rejected by the third appellant.

8. The learned single Judge, placed reliance on the decision of the Division Bench of this Court in the judgment dated 18.01.2016 in W.A.No.1700 of 2015 in the case of The Joint Registrar of Cooperative Societies, Nagapattinam Region, Nagapattinam and another vs. R.Chithravelu. In the said Judgment, the Division Bench of this Court placed reliance on the Full Bench Judgment of the Punjab and Haryana High Court in the case of Punjab State Civil Supplies Corporation Limited and others vs. Pyare Lal (LPA No. 113 of 2012 dated 09.12.2012. The Full Bench of the Punjab and Haryana High Court has held that there is no prohibition for payment of earned leave and leave on private affairs to those who are facing any enquiry after the date of retirement. Thus, the issue involved in the writ petition filed by the respondent is no longer res integra and it was settled by the Full Bench of the Punjab and Haryana High Court, which was also subsequently followed by the Division Bench of this Court in the judgment dated 18.01.2016 mentioned supra. Following the aforesaid decision, the learned single Judge rightly allowed the writ petition filed by the respondent herein and directed the appellants to settle the monetary benefits relating to encashment of earned leave and leave on private affairs.

9. Furthermore, yet another Division Bench of this Court in the Judgment dated 13.04.2016 passed in W.A. No. 458 of 2016 (The District Collector, Thiruvallur District, Tiruvallur vs. T.L. Nageswara Rao) had an occasion to consider the very same issue as to whether an employee, who was subjected to disciplinary proceedings, is entitled for disbursement of earned leave and leave on private affairs. In the said Judgment, it was held in para No.3 and 4 as follows:-

"3. A. Vignette of the facts, leading to the filing of this intra-Court appeal is that, while the respondent was working as Deputy Tahsildar in the Revenue Department, a criminal case was registered against him, under the provisions of the Prevention of Corruption Act. On the said ground, he was suspended from service. While so, on 30 September 2013, when he reached the age of superannuation, he was not permitted to retire on account of pendency of criminal case against him. Albeit, he made a representation seeking release of terminal

benefits such as General Provident Fund, Special Provident Fund, Encashment of Earned Leave and Unearned Leave on Private Affairs, there was no response from the appellant. Hence, he filed the instant writ petition seeking a direction to the appellant for disbursal of the said benefits to him. The learned single Judge, observing that the terminal benefits are the respondent's properties and as such, the same cannot be withheld by the State, even assuming that he is dismissed from service, disposed of the writ petition with a direction to the appellant to disburse the terminal benefits, as aforesaid to the respondent, within a period of six weeks. Feeling aggrieved, the State has come up with this Intra-Court appeal.

4. We are in full agreement with the view taken by the learned Single Judge and as such, we do not find any reason whatsoever to take a view contrary to the one taken in the order under assail in this Intra-Court appeal.

As a sequitur, this intra Court appeal fails and is accordingly dismissed. However, we grant further four weeks time to the authorities to comply with the order passed by the learned single Judge. Costs made easy. Connected C.M.P. is closed."

10. In the light of the aforesaid decisions of the Division Bench of this Court, the conclusion reached by the learned single Judge is perfectly in order. Therefore, we do not find any reason to interfere with the order passed by the learned single Judge. Accordingly, we confirm the Order dated 27.11.2018 passed in WP No. 42100 of 2016 by the learned single Judge. The Writ Appeal fails and it is dismissed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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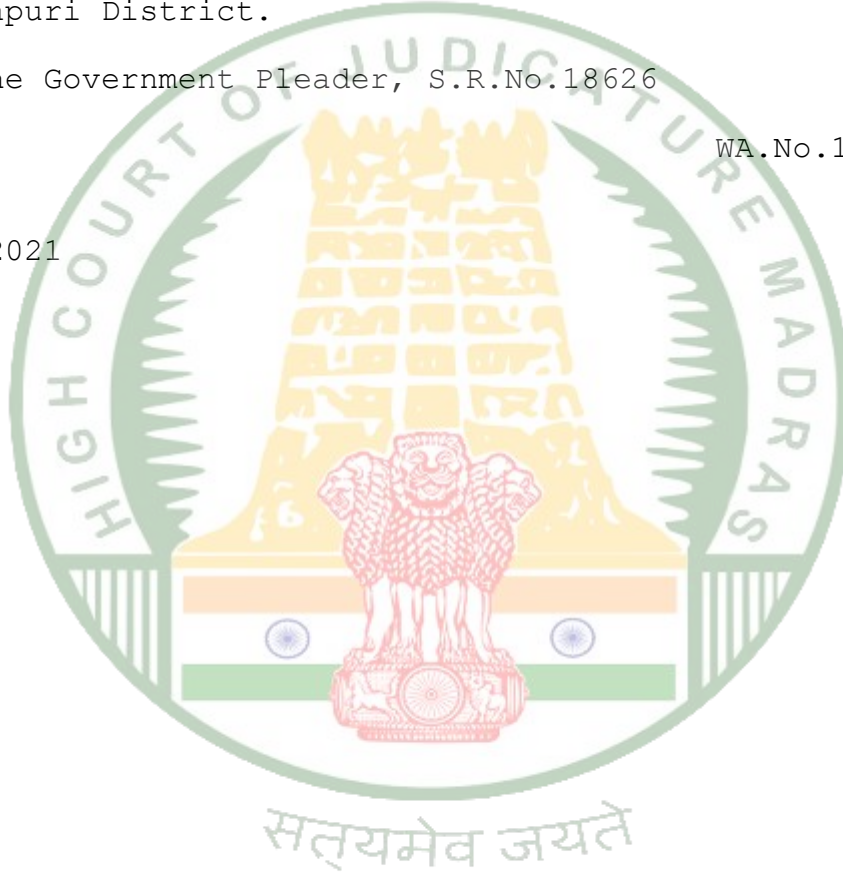
To

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Chennai - 600 108.
2. The District Collector
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Dharmapuri District.
3. The Assistant Director of Town Panchayats
Dharmapuri Zone,
Dharmapuri District.

+1cc to the Government Pleader, S.R.No.18626

WA.No.1951 of 2019

JPL (CO)
CS/16/06/2021



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