IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.27336 of 2019

P.A.Palanimuthu ...Petitioner

Vs.

1.The Director General of Police
Dr.Radhakrishnan Salai
Mylapore
Chennai - 600 004.

2.The Deputy Inspector General of Police
Tiruchirappalli Range
Tiruchi.

3.The Superintendent of Police
Ariyalur District
Ariyalur. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 3rd respondent in his proceedings Na.Ka.No.B5/285/2018 dated 16.02.2018 and quash the same and direct the respondents to settle the permissible terminal benefits such as Encashment of Earned Leave for 240 days, Gratuity, Family Benefit Fund, Un-earned Leave for 180 days with half pay and admissible amount.

For Petitioner : Mr.P.Ganesan
for M/s.C.S.Associates
For Respondents: Mr.K.V.Sajeev Kumar
Counsel for Government

O R D E R

By consent of both the parties, this writ petition is taken up for final disposal.

2.The petitioner is before this Court with a prayer to quash the proceedings of the 3rd respondent dated 16.02.2018 in Na.Ka.No.B5/285/2018 and to direct the respondents to settle the permissible terminal benefits such as Encashment of Earned Leave for 240 days, Gratuity, Family Benefit Fund, Un-earned Leave for 180 days with half pay and admissible amount.

3.The petitioner herein was subjected to Departmental action and ultimately dismissed from service on 31.08.2007. The petitioner's request for settlement of his permissible terminal benefits were rejected by the 3rd respondent in its proceedings dated 16.02.2018, on the ground that he was dismissed from service and he is not eligible for retirement benefits.

4.The issue, with regard to dismissed employees entitlement to receive certain eligible monetary benefits and other permissible benefits, came up for consideration, time and again before this Court. In one of the decisions rendered by the Hon'ble Division Bench of this Court in the case of The Secretary to Government Vs. K.Palaniyandi in W.A.(MD).No.105 of 2019 it was held that the benefits such as Encashment of Earned Leave, Gratuity, Family Benefit Fund, Un-earned Leave etc., are permissible benefits for disbursement to such employees. The relevant portion of the order reads as follows:-

> "15.There are two types of monetary benefits payable to a Government Servant on retirement. One type of such benefits, such as Earned Leave, Provident Fund and Special Provident Fund amount, is a benefit already accrued and got credited to the account of the employee, which he is entitled to receive automatically on attaining superannuation. Those amounts become his personal property. It makes no difference even if he is not permitted to retire and a departmental proceedings is initiated against him. In other words, those amounts are derived out of like his savings and therefore, the employer cannot stake any claim or impose any restriction as to when such amount could be paid to the employee even after attaining the age of superannuation. In other words, even as per rules, these amounts are payable either on the date of superannuation or on the date of termination of extension of service. Such payment is to be made even to a person dismissed from service. When such being the position, there cannot be any justification on the part of the employer to retain the said sum by citing the pendency of proceedings.
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> ....
> ....
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> 21.The another Division Bench of this Court in W.A.No.207 of 2016 dated 26.02.2016 has considered the very same issue and observed as follows:-
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> The instant intra-court appeal arises from the order dated 2nd June 2015 made in W.P.No.15457 of 2015.
>
> 2.The writ petitioner, who is the respondent

herein, filed the writ petition, seeking direction to the appellants herein to disburse his retirement benefits, such as gratuity, special provident fund, encashment of earned leave and unearned leave on private affairs.

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 petitioner, 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.

22.The above said decision of the Division Bench was put to challenge before the Apex Court, which, in turn, dismissed the Special Leave Petition on 06.07.2017 by observing that no ground to interfere with the impugned order of the Division Bench.

23.In a recent decision of the Division Bench reported in 2019 in L.R.825 (State of Tamil Nadu Vs. V.Mahalingam), the same issue was considered and it has been observed at paragraph 5 as follows:-

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 on 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 [(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."

5.The aforesaid extract is self explanatory as such the impugned order rejecting the petitioner' request to grant permissible terminal benefits, cannot be sustained.

6.In the light of the above, the impugned order dated 16.02.2018 in Na.Ka.No.B5/285/2018 on the file of the 3rd respondent is hereby quashed. Consequently, there shall be a direction to the respondents to settle the petitioner with the permissible terminal benefits, such as Encashment of Earned Leave, Family Benefit Fund, Un-earned Leave with half pay and any other permissible amount, within a period of twelve weeks from the date of receipt of a copy of this order.

7.With the above direction, this Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
1.The Director General of Police
Dr.Radhakrishnan Salai
Mylapore
Chennai - 600 004.

2.The Deputy Inspector General of Police
Tiruchirappalli Range
Tiruchi.

3.The Superintendent of Police
Ariyalur District
Ariyalur.

+1cc to M/s.C.S.Associates, Advocate SR.No. 34293

W.P.No.27336 of 2019

PMK(CO)
B.VC(10.08.2021)