

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 19.01.2021

Judgment Delivered on : 22-01-2021

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No. 4330 of 2019
and
C.M.P.No.27651 of 2019

1. Tamil Nadu Tourism Development Corporation Limited
rep. by its General Manager
No.2, Wallajah Road
Chennai - 600 002
 2. The Chairman and Board of Directors
Tamil Nadu Tourism Development Corporation Limited
No.2, Wallajah Road
Chennai - 600 002
 3. The Managing Director
Tamil Nadu Tourism Development Corporation Limited
No.2, Wallajah Road
Chennai - 600 002
- .. Appellants/Respondents
- Versus

1. Tamil Nadu Tourism Development Corporation's
Retired Officers and Staff Welfare Association
represented by its President
A. Muthukumarasamy
 2. The State of Tamil Nadu
represented by its Secretary
Finance (BPE) Department
Secretariat, Fort St. George
Chennai - 600 009
- ..1st Respondent/Petitioner
- ..2nd Respondents/
1st Petitioner

Prayer in WP.No.28097/2012:-

This petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent relaxing to the proceedings letter No.6360/A2/2011 dated 13/03/2012, rejecting the petitioners demand of to give effect the 1st respondents Letter No.37568/BPE/2006, dated 28/01/2008 from 28/01/2008 and quash the same and consequently, direct the 2nd to 4th respondents to extend the benefits of G.O.Ms.No.488, Finance (Pension) Department dated 12/08/1996 read in conjunction with Government Lr.No.37568/BPE/2006 Finance (BPE) Department dated 28/01/2008 to the Members of the Petitioners Association as directed by the 1st respondent in its letter dated 28/01/2008.

For Appellants : Mr.P.H.Aravindh Pandian
Additional Advocate General
for Mr.C.V.Shilandhran

For Respondents : Mrs.R.Hemalatha for R-1

JUDGMENT

This Writ Appeal has been filed by the Tamil Nadu Tourism and Development Corporation Limited, Chennai, challenging the order dated 08.04.2019 passed by the learned Single Judge in WP No. 28097 of 2012, which was filed by the first respondent herein, whereby the impugned order of the first appellant dated 13.03.2012 was quashed and consequently a direction was issued to the appellant to extend the benefit of G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996 to the members of the first respondent- Association and implement the benefit of encashment of unearned leave on private affairs to them with effect from 28.01.2008. सत्यमेव जयते

2. The brief facts which are necessary for disposal of the appeal are as follows:-

3. The first respondent/writ petitioner is an Association and the members of the association are retired employees of the Tamil Nadu Tourism and Development Corporation Limited. The members have retired from service between 28.01.2008 and 29.06.2010. It is the case of the first respondent that the State Government issued an order in G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996, whereby certain benefits such as surrendering half pay of encashment of unearned leave on private affairs, were extended to the Government Servants. Subsequently, by letter No.37568/BPE/2006 dated 28.01.2008 of the Secretary to Government, Finance (BPE) Department, the aforesaid benefits of surrendering half pay of encashment of unearned leave on private affairs, were also extended to the employees of Statutory Boards and State Public Sector Undertakings. Since

the appellant is a statutory body, G.O.Ms.No.488, dated 12.08.1996 is applicable to it and consequently, the members of the first respondent-Association are entitled to the aforesaid benefit. The letter dated 28.01.2008 issued by the State Government, extending the benefit of G.O.Ms.No.488, dated 12.08.1996 relating to encashment of unearned leave on private affairs at the time of retirement reads as follows:-

"In the Government letter 2nd cited, among other things, while extending the facility of encashment of Earned leave at the time of retirement for the employees of State Public Sector Undertakings/Boards, it was instructed that the Government have not extended the benefit of encashment of Unearned Leave on Private Affairs to the employees of the State Public Sector Undertakings/Board as in the case of Government Servants with reference to the G.O. Ms. No.488, Finance (Pension) Department dated 12.08.1996, first cited.

2. As far as Statutory Boards are concerned, they follow the Tamil Nadu Leave Rules, 1993 applicable for Government Servants as amended from time to time. Also, since the Service Rules and Regularisation of the Statutory Boards provide for all the benefits extended to Government Servants, re-examination of this become necessary.

3. The Government after careful examination of this issue in the present context, issue the following directions:-

"The scheme of encashment of Unearned leave on private affairs ordered in G.O. Ms. No.488, Finance (Pension) Department dated 12.08.1996 for Government servants may also be extended to the employees of all Statutory Boards and State Public Sector Undertakings who are getting Government scales of pay, butnot the employees who are governed by periodic wage settlement and Industrial Dispute Act, subject to the condition that the concern Board/State Public Sector Undertakings should not seek financial assistance from the Government for this purpose."

4. These instructions will take effect from the date of issue of orders.

5. The Chief Executive Officers of State Public Sector Undertakings/Boards are requested to place this before the Board of Directors in the next meeting."

4. As per para No.5 of the aforesaid Government Letter dated 28.01.2008, the Chief Executive Officer of the State Public Sector Undertakings/Board shall place the Government Letter dated 28.01.2008 before the Board of Directors in the ensuing meeting for approval. However, the Board should not seek financial assistance from the Government for extending the benefits to the retired employees. Accordingly, in the instant

case, the Government letter dated 28.01.2008 was placed before the Board on 15.06.2010 and a decision thereof was taken only on 29.06.2010. In the meantime, in between 28.01.2008 and 29.06.2010 the members of the first respondent-Association retired from service. The benefits covered under the order dated 29.06.2010 were not extended to the members of the first respondent-Association who retired on 28.01.2008, the date of issuing the Government letter, till 29.06.2010, the date on which the appellants' Board had taken a decision to implement the scheme in favour of their employees. Therefore, the members of the first respondent-Association made a representation on 23.07.2010 to the Chairman of the TTDC Ltd., to extend the scheme of encashment of unearned leave on private affairs with effect from 28.01.2008 as per the Government letter. The said representation was rejected by the appellant on 13.03.2012 stating that the benefits are payable only from the date on which the Board approved the scheme namely 29.06.2010. Challenging the order of rejection dated 13.03.2012, the WP No. 28097 of 2012 was filed.

5. The case of the first respondent was resisted by the appellant herein before the learned Single Judge by contending inter alia that the Government letter dated 28.01.2008 giving instructions for extending the scheme of encashment of unearned leave on private affairs will take effect from the date of issue of the order. Therefore, the extension of the scheme to the employees of the State Public Sector Undertaking/Board will only be prospective and cannot be retrospective, as claimed by the writ petitioners. Further, there is no mandate for the Public Sector undertakings to extend the scheme of encashment of unearned leave on private affairs from the date of Government Order. Further, instructions of the Government are recommendatory in nature and not mandatory. Therefore, the claim of the members of the first respondent-Association for extension of the benefit of encashment of unearned leave on private affairs with retrospective effect, cannot be sustained. In fact, the appellants are not extending several employees benefit schemes applicable to the Government employees. This is due to the fact that public sector undertakings have to consider their financial position before effecting the scheme of the Government to its employees. Though the Government in the Government letter dated 28.01.2008 had requested the Chief Executive Officers of the State Public Sector Undertakings/Boards to place the Government letter before the Board of Directors in the next meeting, as soon as the same was brought to the knowledge of the Board by the appellants, the same was immediately placed and there is absolutely no delay on the part of the appellants in placing the Government letter in the Board meeting. Therefore, the appellants sought for dismissal of the writ petition as devoid of merits.

6. The learned Single Judge, on a consideration of the rival submissions, allowed the writ petition on 08.04.2019 by finding that the appellants should have followed the instructions of the Government in true letter and spirit and ought to have extended the benefits thereof to its employees.

The learned Single Judge also observed that the stand of the appellants that they came to know about the letter dated 28.01.2008 of the Government only after the writ petitioners submitted a representation, cannot be countenanced. Even if no representation is received, the appellants ought to have acted upon the instructions given by the Government. Therefore, the learned Single Judge held that the delay in taking a decision to give effect to the scheme formulated by the Government, cannot be put against the petitioners to deny them the monetary benefit.

7. The learned Additional Advocate General appearing for the appellants contended that only in the year 2010, on receipt of letter from the employees, the management of TTDC came to know about the benefits extended by the Government in the letter dated 28.01.2008 and immediately in the next meeting of the Board, the Government letter dated 28.01.2008 was placed. Further, it is not mandatory on the part of the appellants to extend the benefit of the scheme and it depends upon the financial resourcefulness of the appellants. However, the learned Single Judge rejected the said submission and directed the appellants to extend the benefit of the scheme to the members of the first respondent-Association. The learned Additional Advocate General appearing for the appellants also submitted that though the Government issued the Government letter on 28.01.2008 extending the benefit of the scheme relating to encashment of unearned leave on private affairs to the employees of the State Public Sector Undertakings/Board as in the case of government servants as per G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996, the same was brought to the knowledge of the appellants only on 15.03.2010 by the then employees. Immediately, the same was placed for approval in the next Board meeting held on 15.06.2010 and a decision was taken to give effect to the scheme on 29.06.2010. Even as per the Government letter, instructions of the Government will take effect only from the date of issue of the order. Furthermore, it is not mandatory on the part of the appellants to follow the order passed by the Government. The learned Additional Advocate General emphatically reiterated that whether to implement the scheme extended by the Government to their employees or not, depends upon the financial resourcefulness of the appellant. Therefore, the members of the first respondent-Association cannot, as a matter of right, seek for a direction to implement the scheme with retrospective effect from 28.01.2008. In this regard, attention of this Court was drawn to the affidavit dated 09.03.2020 filed by the General Manager of the appellant-Corporation, wherein it has been stated as follows:-

"2. In this connection, it is humbly submitted that on verifying the records, it was found that the Government Order had not reached this office at all. The then existing employees of TTDC in their letter received on 15.03.2010 have enclosed Letter No.37568/BPE/2006 dated 28.01.2008 of Finance (BPE) Department and sought for the benefit stated therein.

3. Only on receipt of the letter from the then employees on 15.03.2010, the Management of TTDC came to know the existence of the sanction of benefit.

4. On receipt of this letter from the employees on 15.03.2010, the Management, as directed by the Government, immediately placed the matter before the Board in the next meeting which was held on 15.06.2010. In the said meeting, it was "resolved to approve the scheme of encashment of unearned leave on private affairs at the time of retirement to the extent of 50% of the leave on private affairs standing to the credit of employees, subject to maximum of 90 days to all the employees of TTDC by adoption of Government Orders issued vide G.O. Ms. No.488, Finance (Pension) Department dated 12.08.1996 read in conjunction with Government Letter No.37568/BEP/2006, Finance (BPE) Department dated 28.01.2008.

5. After the sanction of the benefit as per resolution, 2 retired officers of TTDC viz., Thiru. U. Sivanarayanan and Thiru. P. Kumar in their letter dated 23.07.2010 have informed that TTDC has placed the matter only in the 246th Board meeting held on 15.06.2010 which is against the directions issued in the Government letter to place the matter in the next Meeting immediately after receipt of on 28.01.2008.

6. It is to be mentioned that these two employees viz., Thiru. U. Sivanarayanan and Thiru. P. Kumar, who have represented only on 23.07.2010 retired from the service of TTDC only on 30.09.2009 and 31.03.2010 respectively, were also not aware of this order issued during 2008. They were very much in the existing rolls in 2008.

7. Only after the then existing employees of TTDC represented the matter to the Management, the retired officers, who were in service during 2008, have subsequently brought this matter to the notice of the Management for sanction of claiming the benefit."

8. Therefore, the learned Additional Advocate General appearing for the appellants submitted that when it was brought to the notice of the appellants the scheme formulated by the Government only in the year 2010, the appellants cannot be compelled to extend such benefits with retrospective effect. The learned Single Judge, without considering the above, had issued a direction to the appellants to implement the benefit of the scheme from 28.01.2008 and thus sought for allowing the appeal.

<https://hcservices.ecourts.gov.in/hcservices/>

9. Per contra, the learned counsel for the first respondent made his submission that when the appellant had chosen to

implement the benefit to those who retired from 30.06.2010, the refusal to extend the benefits to the employees who retired from 28.01.2008 is uncalled for. The Government had issued the letter dated 28.01.2008 directing the State Public Sector Undertaking/Board to place the order passed by the Government in the ensuing Board meeting. For the delay caused by the appellant in placing the Government Order in the Board meeting, the members of the first respondent- Association cannot be penalised. Thus, the learned counsel for the first respondent prayed for dismissal of the writ appeal.

10. Keeping the above submissions of the learned counsel on both sides, we have perused the materials placed on record. The main submission of the learned Additional Advocate General appearing for the appellants is that the letter dated 28.01.2008 issued by the Government to extend the benefit of encashment of Unearned leave to the employees of the State Public Sector Undertakings/Board, was brought to the knowledge of the Board only on 15.03.2010. Thereafter, in the immediate next meeting held on 15.06.2010, the Government letter was placed and a resolution was passed on 29.06.2010. In any event, implementation of the scheme depends upon the financial resourcefulness of the Board and it cannot be sought for as a matter of right by the members of the first respondent/writ petitioners.

11. The Government, by letter dated 28.01.2008, directed the Public Sector Undertakings as well as the Statutory Boards to extend the benefit of encashment of Unearned Leave on Private affairs, which was hitherto conferred only to the employees of the Government. According to the appellants, they have no knowledge about the extension of such benefit or the Government letter dated 28.01.2008 and therefore, they had no occasion to consider extending such benefits in favour of their employees.

12. The aforesaid contention of the appellants cannot be countenanced. As a statutory body, the appellants could have kept themselves abreast with all the decisions taken by the Government from time to time and they cannot feign ignorance. The further fallacy is that the appellants refuse to extend the benefits in favour of the members of the first respondent association from 28.01.2008 on the ground that the benefit extended by the Government, was brought to their notice only when their former employees submitted a representation dated 15.03.2010. The learned Single Judge, on a consideration of such a plea, has rightly held that the appellants cannot expect their employees to bring to their notice certain benefits of the scheme announced by the Government or it will be the starting point for extension of the benefits in favour of the employees. The learned Single Judge has also held that if the employees did not bring to the notice of the appellants the Government letter dated 28.01.2008, on 15.03.2010, there is no guarantee that the Board would have implemented the benefits to their employees at all. Absolutely, there is no need for the appellants to wait for a representation to be given by the

employees. Curiously, the General Manager of the appellants had filed an affidavit stating that the Government Letter was not received by the appellants and only when the then employees submitted a letter on 15.03.2010, they came to know about the decision of the Government.

13. In our view, there is an obligation on the part of the appellants to place the Government letter dated 28.01.2008 and to give effect to the benefit with retrospective effect viz., from the date on which the Government directed the Public Sector Undertakings/Statutory Boards to implement it. The appellants, in our opinion, cannot feign ignorance about the order passed by the Government extending certain benefits to the employees of the Public Sector Undertaking/Boards on par with the Government servants. Even though the order passed by the Government to give effect to the benefits of the scheme is not mandatory, in the instant case, the appellant had chosen to extend the benefits in favour of the employees who retired on or after 30.06.2010, while so, they cannot discriminate the members of the first respondent to get the benefits of the same, who retired in between 28.01.2008 and 29.06.2010. The appellant has to adopt the same yardstick as they have adopted in the case of those who retired after 30.06.2010 in favour of the members of the first respondent/writ petitioners as well. In such view of the matter, we do not find any reason to interfere with the order passed by the learned Single Judge.

14. Accordingly, we confirm the Order dated 08.04.2019 passed by the learned single Judge in WP No. 28097 of 2012 on the file of this Court. The Writ Appeal fails and it is dismissed. No costs. Consequently, connected CMP No. 27651 of 2019 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

cs/rsh

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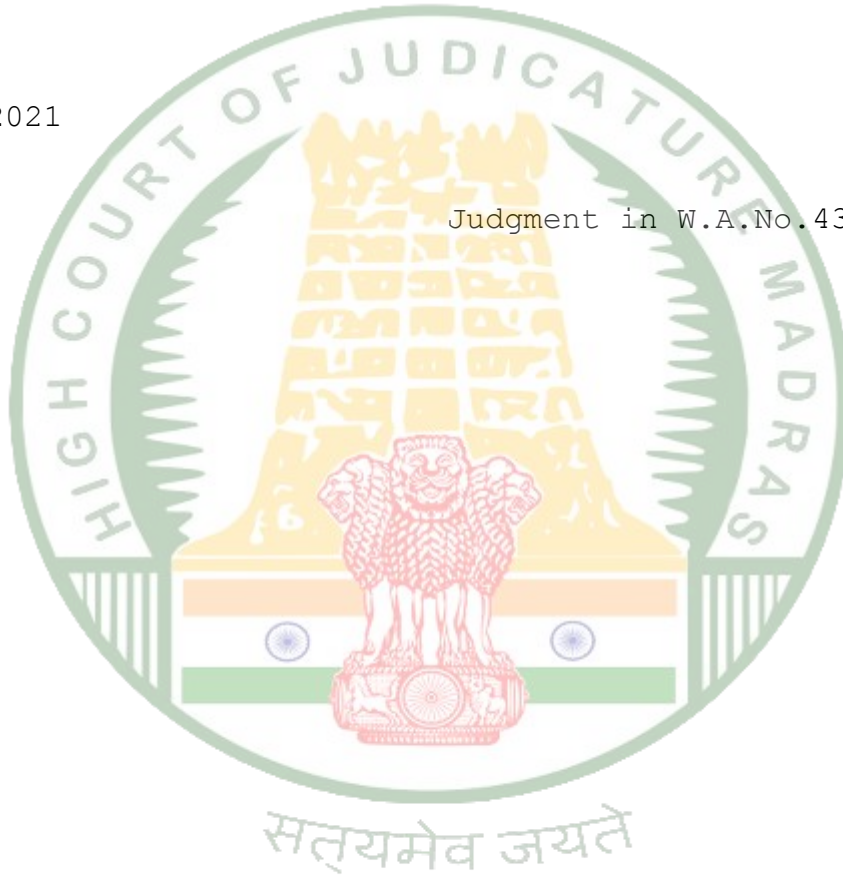
1. The Secretary
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2. The General Manager
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rep. by its General Manager
No.2, Wallajah Road
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3. The Chairman and Board of Directors
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4. The Managing Director
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CP(CO)
SM/16/02/2021

Judgment in W.A.No.4330 of 2019



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