BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.06.2021
CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI
W.P(MD)Nos.8499, 8501 & 8504 of 2021

K.Narayanan ... Petitioner in W.P(MD)No.8499/2021

K.Paulsamy ... Petitioner in W.P(MD)No.8501/2021

M.A.Michael Raj ... Petitioner in W.P(MD)No.8504/2021

vs.

1.The Chairman and Managing Director,
SIDCO, Thiru.V.Ka.Industrial Estate,
Guindy, Chennai - 600 032.

2.The Branch Manager,
SIDCO, Madurai. ... Respondents in all W.Ps'

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writs of Mandamus, directing the respondents to extend the benefit of encashment of unearned leave on private affairs for the period of 90 days to the petitioners and to pay monetary benefits to the petitioners with interest at the rate of 18% per annum payable from the date of retirement of the petitioners to till the date of payment of the said monetary benefits based on the scheme of unearned leave on private affairs in accordance with G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996 and Government letter No.37568/BPE/2006, dated 28.01.2008 within the time stipulated by this Court.

For Petitioner (In all W.Ps') : Mr.K.Muthumalai

For Respondents (In all W.Ps') : Mr.T.Sakthikumaran Standing Counsel

COMMON ORDER

The petitioners have filed these Writ Petitions to direct the respondents to extend the benefit of encashment of unearned leave on private affairs for the period of 90 days to the petitioners and to pay monetary benefits to the petitioners with interest in accordance with G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996 and Government letter No.37568/BPE/2006, dated 28.01.2008.

2.According to the petitioners in W.P(MD)Nos.8499 & 8504 of

2020, after rendering 30 years of service in the respondents-SIDCO Corporation, they opted for voluntary retirement and allowed to retire from service on 31.04.2004 and 31.12.2003 respectively. Further, the petitioner in W.P(MD)No.8501 of 2021, after rendering 35 years of service in the respondents-Corporation, retired from service on attaining the age of superannuation on 30.06.2006. At the time of their retirement, they were paid with Gratuity, Encashment of Earned Leave and Exgratia payment. The petitioners were not paid Encashment of unearned Leave on private affairs.

3.Further, according to the petitioners, by G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996, the Government employees, at the time of retirement, were given the benefit of Encashment of 50% of the leave on private affairs. Paragraph No.2(a) & (b) of the said Government Order, reads as follows:-

> *"2.The Government have decided to accept the long pending demand of various associations of employees to surrender half pay leave on private affairs at the time of retirement and also to grant full leave salary on encashment of the entire earned leave at credit of retiring employees. Accordingly, Government pass the following orders:-*
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> *a.At the time of retirement, 50% of the leave on private affairs standing to the credit of the employees upto a maximum of 90 days, be entitled for full leave salary. The head of office shall draw the leave salary on encashment of leave on private affairs, as in the case of encashment of earned leave; and*
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> *b.Full leave salary including dearness allowance and other allowances normally admissible while going on leave during service be allowed for the entire period of earned leave encashment of the time of retirement."*

4.The said benefits granted to the Government employees were extended to the employees of all statutory boards and the State public sector undertakings, vide letter, dated 28.01.2008, by issuing certain instructions by the Secretary to the Government, Finance (BPE) Department.

5.According to the petitioners, the instructions given in the letter, dated 28.01.2008, will take effect from the date of issuance of orders. In view of the instructions in the Government letter, dated 28.01.2008, it is applicable retrospectively from the date of issuance of G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996. The petitioners are eligible to get encashment of unearned leave on private affairs and the right to get encashment of unearned leave on private affairs is an accrued right. Hence, the petitioners gave representations, dated 29.07.2019, 29.07.2019 and 27.09.2019 respectively to the first respondent. Since no action has been taken on the side of the respondents, the petitioners have come out with the present Writ Petitions.

6.The learned counsel appearing for the petitioners submitted that the petitioners are eligible to get encashment of unearned leave on private affairs and the first respondent, ought to have paid the said amount to the petitioners and relied on the Judgment of this Court in W.A.No.1352 of 2015, and etc., batch cases, dated 29.06.2016 [The Government of Tamil Nadu, Rep. by its Secretary to Government, Environment and Forest Department, Chennai and others Vs. P.Gurusami].

7.Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

8.From the materials available on record, it is seen that earlier to G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996, the Government servant was entitled to encashment of entire earned leave subject to maximum of 240 days standing to the credit of the employees. There is no provision for encashment of earned leave on private affairs. Only by G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996, the Government servants were given the benefits of encashment of 50% of the leave on private affairs standing to their credit upto a maximum of 90 days. The said benefit was given only to the Government employees. Subsequently, by letter, dated 28.01.2008, the said benefit was extended to the employees of all State public sector undertakings/Boards. In paragraph No.4 of the said letter, it is made clear that "these instructions will take effect from date of issue of orders". Therefore, the extension of benefits given to the employees of all statutory boards and public sector undertakings will be prospective in nature and it has no retrospective effect. The interpretation given by the petitioners is that the benefits extended by the letter, dated 28.01.2008, has retrospective effect from the date of issuance of G.O is contrary to paragraph No.4 of the said letter, dated 28.01.2008. The Judgment relied on by the learned counsel for the petitioners in W.A.No.1352 of 2015 and etc., batch cases, dated 29.06.2016 is not applicable to the facts of the present case. The present issue was not an issue before the Division Bench of this Court in W.A.No.1352 of 2015 and etc., batch cases and the Division Bench of this Court did not give any finding that the letter, dated 28.01.2008, has retrospective effect. When the petitioners in W.P (MD)Nos.8499 & 8504 of 2020, retired on 31.04.2004 and 31.12.2003 respectively, on voluntary retirement and the petitioner in W.P(MD) No.8501 of 2021 retired from service on attaining the age of superannuation on 30.06.2006, the scheme of encashment of earned leave on private affairs was not in force and therefore, the petitioners are not entitled to the said benefit.

9.For the above reasons, these Writ Petitions are dismissed. No costs.

Sd/-
Assistant Registrar (W)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To
The Chairman and Managing Director,
SIDCO, Thiru.V.Ka.Industrial Estate,
Guindy, Chennai - 600 032.

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-19324[F] dated 15/06/2021)

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KK(28.06.2021) 4P 3C