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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

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THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.NO.8316 OF 2011

J.Baskaran

...Petitioner

Vs

1. The Principal Secretary to Govt.,
Transport Department,
Fort St. George, Chennai.
2. The Managing Director,
State Express Transport Corporation,
Pallavan Saalai, Chennai.

...Respondents

PRAYER:

Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned orders passed by the 2nd respondent in Letter No.002233/WA1/SETCTN/08 dated 06.09.2010 and Letter No. 002233/WA1/SETC/2008 dated 21.01.2011 and quash the same and consequently direct the respondents to pay the encashment of unearned leave on private affairs to the petitioner based on the Government Order in Letter No.37568/BPE/2006 dated 28.01.2008 with interest at the rate of 12% per annum for belated payment.

For Petitioner : Mr.R.Prem Narayan

For R1 : Mr.Veda Bagath Singh,
Special Government Pleader

For R2 : No Appearance

ORDER

The petitioner herein, who was employed as a Company Secretary in the second respondent Corporation, is aggrieved against the orders of the respondent in denying encashment of unearned leave on private affairs.



2. The issue as to the entitlement of an employee of the respondent Corporation for encashment of unearned leave on private affairs has already been dealt with by an Hon'ble Division Bench of this Court in the case of The Tamil Nadu State Transport Corporation (Kumbakonam) Limited and others Vs S.Venugopal and others and in its order dated 27.03.2018 passed in W.A(MD) Nos.939 to 944 of 2017, etc., holding that the employees of the Corporation will not be entitled for such encashment. The relevant portion of the order reads as follows:-

"7.It is an admitted fact that G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996 issued by the State Government did not extend the benefit of encashment of unearned leave on private affairs at the time of retirement to the State Government undertakings or statutory bodies etc and such benefit was extended to the Government servants and the maximum period was stipulated as 90 days. Thus, by virtue of G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996, the respondents/writ petitioners cannot make a claim for the encashment of the unearned leave on private affairs.

8.The problem arose on account of a letter, dated 28.01.2008. Admittedly, the Government order cannot superseded by a Government letter, which has been issued by the Secretary of the Government. At the best, it is advisory and not mandatory in which, a clarification was issued that the scheme of encashment of unearned leave on private affairs ordered in G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996 may also be extended of employees of statutory bodies and the State Government undertakings. It appears that a thorough exercise was not undertaken by the Finance Department before issuing the Clarificatory Letter, dated 28.01.2008. Subsequently, it appears that the matter was brought to the knowledge of the Finance Department, the Secretary to the Government of Tamil Nadu and appropriate clarification was issued by the Government on 15.02.2012, whereby, making it clear that if a State Public sector undertaking has such a provision in their Regulations and Service Rules, they may continue to do so. In the said Government letter, in paragraph No.3, the Government



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specifically took note of the fact that few State Public Sector Undertakings have extended the benefit of encashment of Unearned Leave on Private Affairs to their employees, even though there was no provision in their services rules for extension of such benefit and seek later orders for ratification from the Government. That apart, in paragraph No.4(ii), the Government had specifically clarified that the scheme should not be extended to the employees of State Public Sector Undertakings, whose Service Rules did not contain the provision for encashment of unearned Leave on private affairs.

9. Thus the mistake committed by the Government in issuing a letter, dated 28.01.2008, stood and appropriately clarified by the Finance Department. In the interregnum i.e., in the year 2010, the Board of the appellants/Transport Corporation placed the Government Order, dated 28.01.2008 for consideration and the decision taken in the meeting held on 15.06.2010 states "recorded for implementation". The fact remains that though such resolution was passed, the same remained un- mplemented and well before that could take place, the Government had clarified that such scheme will not apply to State Public Sector Undertakings whether there is no Service Rule or Regulation to that effect. Therefore, reliance placed on resolution by the learned counsel for the respondents/writ petitioners is self-serving, it is more so, because the respondents/writ petitioners, who have come forward before this Court claiming the benefits are all persons in the Managerial/Supervisory cadre.

10. Insofar as the decision in the case of Tamil Nadu Tata Plantation Corporation Limited is concerned, we find that the case is factually different and taking note of the conduct of the respondents in the said case, the Division Bench had issued the direction. In any event, we find that the correctness of the said decision has been challenged before the Honourable Supreme Court and stay of the Judgment has been granted in S.L.P.No.23510-23513/2016, dated 14.12.2016.



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11.As noticed above, there is a separate Service Rule for the employees of the appellants/Transport Corporation. Annexure-II of the common Service Rules deals with Unearned Leave and on perusal of the said Rules, we find that there is no such Leave Rule called as unearned leave on private affairs. Thus, unless and until, such a leave is contemplated under the Service Rule, the question of encashment does not arise. It is to be noted that all the respondents/writ petitioners have all served in the appellants/Transport Corporation and were bound by the Service Rules framed by the Corporation. Therefore, at this distant point of time, after they attained the age of superannuation, the question of claiming such a benefit does not arise."

3. The aforesaid extract is self explanatory. Since the Hon'ble Division Bench has already held that the employees of the Transport Corporation will not be entitled for encashment of unearned leave on private affairs, I do not find any infirmity in the impugned order. Accordingly, the Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Principal Secretary to Govt.,
Transport Department,
Fort St. George, Chennai.
2. The Managing Director,
State Express Transport Corporation,
Pallavan Saalai, Chennai.

+1cc to the Government Pleader, S.R.No.9025

W.P.No.8316 of 2011

MT(CO)
PM/01/03/2022