IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.4161 of 2014

Ramani ...Petitioner

-Vs-

1. District Registrar,
   Gobichettipalayam - 638 452,
   Erode District.

2. The Inspector General of Registration,
   No.100, Santhome High Road,
   Chennai - 600 028.

3. Sub Treasury Officer,
   Gobichettipalayam. ...Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records made in the impugned order Na.Ka.No.3012/A1/2013 dated 31.07.2013 passed by the 1st respondent herein, quash the same and further direct the respondents 1 and 2 to pay simple interest @ 15% p.a. on the sum to be drawn as Leave Encashment Benefit from the date next falling to the superannuation dated (i.e. 01.02.2011) to the date of sanction order as compensation to the petitioner.

For Petitioner : Mr.V.Chandrasekaran

For Respondents: Mr.T.Chezhiyan,
Additional Government Pleader

ORDER

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

2.The petitioner's claim for encashment of Earned Leave was rejected through the impugned order dated 31.07.2013, on the ground that the departmental action under Rule 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules is pending and that his service is under extension. Pursuant to the impugned order, the petitioner was terminated from the services, after enquiry, in the year 2019.

3.While the learned counsel for the petitioner submits that in view of the decision of the Hon'ble Division Bench of this Court in the case of State of Tamil Nadu, Public Works Department and another Vs. V.Mahalingam, the respondents cannot deny encashment of Earned Leave to a Government servant, who has been terminated from service, the learned Additional Government Pleader for the respondents submitted that in view of the explanation to Rule 7 of the Tamil Nadu Leave Rules, when the services of the Government servant is extended and thereafter terminated, he would not be entitled for encashment of Earned Leave.

4.The Hon'ble Division Bench in V.Mahalingam's case (supra) has dealt with the objection raised by the learned Additional Government Pleader in paragraph 5 of the judgment and held that the Government employee, whose services have been terminated, is legitimately entitled to receive the encashment of Earned Leave. The relevant portion of the judgment reads 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.

6.In the backdrop of the aforesaid legal position, we required the Learned Special Government Pleader to show which statutory provisions enabled the Respondents to withhold the 'earned leave' of the Petitioner after he attained the age of superannuation. In reply thereto, the Learned Special Government Pleader referred to Rules 21 and 69 of the Tamil Nadu Pension Rules, 1978 and Rule 56(1)(c) of the Fundamental Rules and Note 3 to Rule 7-A of the Tamil Nadu Leave Rules, 1933. We shall presently examine whether the same enable the Respondents to withhold the encashment of the earned leave of the Petitioner.

7.Rule 21 of the Tamil Nadu Pension Rules, 1978, is extracted below:-

> “21. Forfeiture of service on dismissal or removal:- Dismissal or removal of Government Servant from a service or post entails forfeiture of his past service.”

The Learned Special Government Pleader submits that the forfeiture of past service of a Government Servant on his dismissal or removal from a post entails that no benefits arising out of service could be claimed by him. It must be remembered that the aforesaid rule has to be read in the context of the Tamil Nadu Pension Rules, 1978, where it is found, and cannot be extended beyond its scope. Viewed in that perspective, what has been meant to be conveyed by 'forfeiture' in the said rule is that a Government Servant, who has been dismissed or removed from service, would not be entitled to claim pension relying on his past service. As such, it would be far fetched to read that provision as if all other monetary benefits that have already accrued to him during service would also be lost or deprived.

8.Next, Rule 69 of the Tamil Nadu Pension Rules, 1978, relates to payment of provisional pension when disciplinary proceedings are pending and there is nothing mentioned anywhere in that rule about earned leave and as such, the same does not have any relevance to the issue now under consideration.

9.It is apparent on a reading of Rule 56(1)(c) of the Fundamental Rules that it empowers to continue in service, a Government Servant, who has attained the age of superannuation, till the completion of disciplinary proceedings or criminal prosecution, so that depending on its outcome, a decision regarding imposing any penalty on such delinquent Government Servant could be taken, but there is nothing therein to infer that earned leave of the said Government Servant could be withheld during that period.

10.Insofar as Note 3 to Rule 7-A of Tamil Nadu Leave Rules, 1933 is concerned, it relates only to ineligibility to receive earned leave during the period of suspension and it has nothing to do with the earned leave which has already been accrued to a Government Servant for the period he has worked.

11.On the contrary, reference may be made to the fourth proviso to Rule 8(b) of the Tamil Nadu Leave Rules, 1933, which expressly provides for earned leave to be credited to a Government Servant till his dismissal from service. This clearly reflects that there is no legislative intent to deny that benefit to a Government Servant even if he is dismissed from service.

12.The Special Government Pleader finally sought to justify the withholding of the earned leave on the basis of the communication issued by the Secretary to Government, Government of Tamil Nadu, Personnel and Administrative Reforms (FR.3) Department in the letter No. 6162/FR/III/90-1 dated 17.09.1990, in which clarification has been given on the points raised by the Accountant General regarding the implementation of suo motu authorization of encashment of earned leave at credit at the time of retirement. In particular, the following points and clarifications issued have been relied:-

	Points raised by the Accountant-General	Clarification Issued
(i)	Whether the word 'retirement' mentioned in Tamil Nadu Leave Rules-7 includes compulsory retirement as a measure of punishment, voluntary retirement, dismissal etc., apart from the superannuation retirement and the Government Servants are eligible for the encashment of terminal leave in these cases also.	There are already instructions for encashment of Earned Leave at the time of compulsory retirement under Fundamental Rules 56(2) and Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, voluntary retirement under Fundamental Rules 56(3) and also for medical invalidation. Necessary amendment to Rule 7 of the Tamil Nadu Leave Rules have been issued in G.O. Ms. No. 345, Personnel and Administrative Reforms (FR. Spl.), dated 31.07.1990 in this regard.

	Points raised by the Accountant-General	Clarification Issued
(ii)	Whether the encashment of terminal leave is to be allowed, when the Government servants are placed under suspension shortly before retirement or are permitted to retire without prejudice to the disciplinary proceedings pending against them. It is felt that in such cases, the cash equivalent of leave may have to be withheld for effecting any recovery which may be found to be due while finalising the cases.	If a Government servant is suspended shortly before retirement without prejudice to the disciplinary proceedings pending against him, he may be permitted for encashment of earned leave only after finalisation of the disciplinary proceedings and regulation of the suspension period. If a Government servant is not suspended but only disciplinary proceedings are contemplated before retirement, such person may be allowed for encashment of Earned Leave at the time of superannuation without prejudice to the disciplinary action pending against him.

On a perusal of the same, we are of the considered view that the aforesaid clarifications issued by the Government did not expressly authorize the earned leave of the Petitioner to be withheld and in any event, the same was only in the nature of executive instructions, which do not have any statutory flavour and as such, cannot be 'law' for the purpose of Article 300-A of the Constitution. We are fortified in this view by the decision of the Hon'ble Supreme Court of India in State of Jharkhand -vs- Jitendra Kumar Srivastava [(2013) 12 SCC 210], in which it has been held as follows:-

> "17. It hardly needs to be emphasised that the executive instructions are not having statutory character and, therefore, cannot be termed as “law” within the meaning of the aforesaid Article 300-A. On the basis of

such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory Rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these Rules, the position would have been different."

13. As explained in detail, we do not find anything contained in any of the statutory provisions relied by the Learned Special Government Pleader which have the effect of enabling the Government to withhold the encashment of the accumulated earned leave of a Government Servant when he attained the age of superannuation during his continuance in service pursuant to disciplinary proceedings or criminal prosecution pending against him at that point of time. Accordingly, we hold that in the absence of an enabling statutory provisions to that effect, an unfair advantage cannot be taken of a rather fortuitous situation by snatching the frugally accumulated earned leave of a Government Servant in a capricious manner, which remains unencashed at the time of his attaining the age of superannuation."

5.The aforesaid extract is self explanatory. The Hon'ble Division Bench in the aforesaid judgment had relied upon Article 300-A of the Constitution of India and Fundamental Rule 86(a)(i) and had overruled the similar objections of the Government Pleader, stating that Rule 7 of the Tamil Nadu Leave Rules is a bar for claiming encashment of Earned Leave. As such, the order impugned in the present writ petition cannot be sustained.

6.In the result, the impugned order passed by the first respondent dated 31.07.2013 is quashed. Consequently, there shall be a direction to the respondents to forthwith disburse the encashment of Earned Leave, within a period of 4 weeks from the date of receipt of a copy of this order. The Writ Petition stands thus allowed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The District Registrar,
   Gobichettipalayam - 638 452,
   Erode District.

2. The Inspector General of Registration,
   No.100, Santhome High Road,
   Chennai - 600 028.

3. Sub Treasury Officer,
   Gobichettipalayam.

+1cc to Mr.V.Chandrasekaran, Advocate, S.R.No.22098

+1cc to the Government Pleader, S.R.No.22726

VBM(CO)
RGA(07/04/2022)