IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2022

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.16119 of 2020

M.Ganesan ... Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai, Chennai 600 002. ... Respondents

PRAYER: Writ petition filed under Section 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent Corporation to settle all the terminal and monetary benefits to the petitioner including the commutation of pension, Gratuity, Provident Fund, Leave Salary etc. with interest at 18% p.a. from the due date till payment.

For Petitioner : Mr.C.Vigneswaran
for Mr.AMI V.Kataria

For respondent : Mr.K.Moorthy, Standing Counsel

ORDER

This writ petition has been filed seeking to issue a to issue a Mandamus, directing the respondent Corporation to settle all the terminal and monetary benefits to the petitioner including the commutation of pension, Gratuity, Provident Fund, Leave Salary etc. with interest at 18% p.a. from the due date till payment.

2. The case of the petitioner in brief:

The petitioner worked under the respondent Corporation and he retired from service on 30.11.2018. While he was in service, a case was registered against in Pulianthope District, Sembium Police Station under Sections 8(c) and 20(b)(ii)(B) of Narcotics Drugs and Psychotropic Substances Act, 1985 and he was under suspension and till the date of filing writ petition, no departmental enquiry has been initiated. Subsequently, the petitioner was reinstated in service on 11.04.2017 and no charge sheet was filed. After his retirement, the respondent denied to pay pensionary benefits and other attendant benefits. The petitioner made representation on 22.08.2019. But it was not considered. The petitioner is suffered to meet out his family expenses. Hence this writ petition.

3. The learned Counsel appearing for the petitioner relied upon a decision of this court in W.A.No.1285 of 2019 dated 10.04.2019, wherein, at paragraph No.13, it is held as follows.

> 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.

4. The learned counsel for the petitioner also relied upon a decision of this court in W.P.No.5776 of 2020 dated 13.03.2020, wherein at paragraph No.6. it is held thus.

> 6.The learned counsel would further rely on the recent decision of another Division Bench of this Court in the case of The Secretary to Government, Revenue Department and Ors. Vs. K.Palaniyandi (W.A.(MD) No.105 of 2019 dated 31.07.2019), wherein, the Division Bench in extenso has adverted to various decisions on the subject matter and ultimately confirmed the relief granted by the learned Single Judge of this Court. In fact, the Division Bench, in Paragraph No.23, has referred to the observation of the earlier Division Bench and ultimately confirmed the order passed by the learned Single Judge. Paragraph Nos.23 and 24 of the Division

Bench judgment are extracted hereunder:

"23.In a recent decision of the Division Bench reported in MANU/TN/3139/2019:2019 Writ L.R.825(State of Tamil nadu vs. Mahalingam), the same issue was considered and it has been observed at Paragraph No.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 o 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 (MANU/SC/0801/2013: (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.

24.Therefore, we find the present issue is also certainly similar to the one in the above cases and thus, we find that the order of the Writ Court in granting the relief to the writ petitioner need not be interfered with."

5. The learned Standing Counsel appearing for the respondent submitted that, the representation of the petitioner would be considered, as per the Rules, and appropriate orders would be passed in accordance with law.

6. Inview of the above submission, without expressing any opinion on merits, this court is inclined to pass the following order.

ii) The petitioner is directed to give representation in proper format, seeking benefits, if it is required by the respondent, within one week from the date of receipt of a copy of this order.

ii) The respondent is directed to consider the representation of the petitioner and pass orders on its own merits, in accordance with law, if otherwise he is eligible, within a period of twelve weeks from the date of receipt of a copy of this order.

7. With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

mst

To

The Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai, Chennai 600 002.

+1cc to Mr.K.Moorthy, Advocate SR.No.17542
+1cc to Mr.AMI.V.Kataria, Advocate SR.No.17599

W.P.No.16119 of 2020

MT(CO)
CB(07/04/2022)