



W.P.(MD)No.6654 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.6654 of 2020

M.Premkumar

... Petitioner

Vs.

1. The General Manager,
Personal Administrative Department (Sup)
Settlement Section,
Indian Overseas Bank,
Central Office,
Chennai.

2. The General Manager,
HRMD (Gratuity),
Indian Overseas Bank,
Central Office,
763, Anna Salai,
Chennai.

3. The Chief Manager,
Salary Section,
Central Office,
Chennai.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 17.08.2019 for disbursement of the Leave Encashment with interest from the date of superannuation (31.10.2014), in the light of the orders passed by this Court in W.P.(MD)No. 1484 of 2016 dated 29.01.2016 and W.P(MD)No.4975 of 2018 dated 08.03.2018, within a time frame as stipulated by this Court.

For Petitioner : Mr. C.Arul Vadivel @ Sekar
For Respondents : Mr. N.Dilip Kumar
Standing Counsel

ORDER

The learned counsel for the petitioner would submit that the petitioner filed a writ petition for disbursement of leave encashment with interest from the date of dismissal from service i.e., on 31.10.2014 in the light of the orders passed by this Court in W.P.(MD) No.1484 of 2016 dated 29.01.2016 and W.P.(MD) No.4975 of 2018 dated 08.03.2018 for which, he made a representation, dated 17.08.2019, but no order was passed and hence, the present writ petition is filed with the aforesaid prayer.



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2. The learned counsel for the petitioner submitted that this Court may issue a direction to the respondents to consider the petitioner's representation and pass appropriate orders within the time limit. The learned counsel for the petitioner further submitted that the issue that arises in the present writ petition, is only for encashment of leave.

3. Per contra, the learned Standing Counsel appearing for the respondents submitted that in the present case, the petitioner was dismissed from service on 31.01.2014 and immediately after dismissal of the petitioner as per Rule 38, he is not entitled for encashment of leave and the very same issue was settled by this Court in W.P.(MD) No.22331 of 2016 dated 01.11.2021. Accordingly, he prayed for dismissal of the writ petition.

4. The issue that arises in this writ petition is no longer *res integra* and the same was decided by this Court in W.P.(MD) No.22331 of 2016 dated 01.11.2021, wherein this Court held that as per the proviso to paragraph No.4 of the scheme, a person dismissed from service in accordance with Service Rules is not entitled to the benefit of sub paragraph



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5 of Paragraph 4. As per Rule 38, all leave to the credit of the officer shall be lapsed on resignation, retirement, death, discharge, dismissal of termination from service.

5. Heard the learned counsel on either side.

6. The facts in the present case are not in dispute. The present writ petition is filed for encashment of leave immediately after the dismissal of service on 31.01.2014. The relevant provision of the Indian Overseas Bank (Officers') Service Regulations, 1979, are as follows :

"Lapse of Leave : Save as provided below, all leave to the credit of an Officer shall lapse on resignation, retirement, death, discharge, dismissal or termination.

Provided that where an Officer retires from the Bank's services he shall be eligible to be paid a sum equivalent to the emoluments of any period, not exceeding 240 days of privilege leave that he had accumulated

Provided further that where an Officer dies



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while in service, there shall be payable to his legal representatives, a sum equivalent to the emoluments for the period not exceeding 240 days of privilege leave to his credit as on the date of his death

Provided also that where an Officer leaves or discontinues his services by resignation on or after the 1st Day of April 2001, after giving due notice under sub-regulation (2) of regulation 20, he may be paid a sum equivalent to the emoluments in respect of privilege leave to the extent of half of such leave to his credit on the date of cessation of service, subject to a maximum of 120 days."

7. The relevant portion in the order, dated 01.11.2021 passed in W.P.(MD) No.22331 of 2016, is as follows:

"3.The grievance of the petitioner is that the petitioner was denied earned leave encashment. The petitioner, who was terminated from service, is not entitled to all the terminal benefits, unless it is otherwise provided by Service Rules.

4.The learned counsel appearing for the petitioner relied upon the judgment of the Division



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Bench of this Court, in the case of ***The State rep. by the Principal Secretary and others -vs- M.Vijayaram***, dated 06.09.2019, wherein this Court has held that a person, who was dismissed from service is entitled to get earned leave encashment. However, the learned counsel appearing for the respondents relied upon the judgment of Full Bench of Punjab and Haryana High Court, in the case of ***Punjab State Civil Supplies Corporation Ltd., & Others -vs- Pyare Lal***, reported in ***AIR 2014 Punjab & Haryana 147***. wherein it is held that no benefit of the said service which stood forfeited can be extended to an employee in any manner unless an exception is made out by Government or by Service Rules. The Central Government has framed a scheme to regulate termination, superannuation vide General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976. Paragraph 4 of the scheme deals with superannuation and retirement. Sub-paragraph 5 of paragraph 4 provide for payment of cash equivalent of leave salary in respect of the period of earned leave at his credit as on the date of retirement. However, as per proviso to sub-paragraph 5 of paragraph 4 of the Scheme, a person dismissed from service in accordance



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with Service Rules is not entitled to the benefit of sub-Paragraph 5 of Para 4. Following the judgment of Hon'ble Supreme Court, the Full Bench of Punjab and Haryana High Court made a distinction that if the right to withhold leave encashment is part of a statutory rule, or law then the benefit of leave encashment cannot be claimed as a component earned by the employee.

8. In view of the above said provision and in view of the law laid down by this Court, the petitioner being a dismissed employee, is not entitled to the benefit of leave encashment. Hence, the prayer sought for in this writ petition cannot be granted.

9. Accordingly, this writ petition is dismissed. No costs.

12.12.2022

Index : Yes / No

Speaking Order : Yes / No

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M.DHANDAPANI,J.

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