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W.P.(MD)NO.13285 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.13285 of 2022

M.Soundararajan

... Petitioner

Vs.

1. The Additional Chief Secretary /
Commissioner of Revenue Administration,
Chepauk, Chennai – 600 005.

2. The District Collector,
Ramanathapuram District,
Ramanathapuram.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned rejection order in Na.Ka.A1/30377/2020 dated 09.12.2021 issued by the 2nd respondent and quash the same as illegal, arbitrary and exercise of power and consequently direct the 2nd respondent to settle the monetary benefit for encashment of earned leave salary and leave salary on private affairs with accrued interest within a time frame as fixed by this Court.

For Petitioner : Mr.R.Gowrishankar

For Respondents: Mr.J.K.Jayaseelan,
Government Advocate.

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ORDER

Heard the learned counsel on either side.

2. The writ petitioner was working as Tahsildar. He reached the age of superannuation on 28.02.2014. He was however not allowed to retire. The petitioner was implicated in a vigilance case. He was dismissed from service with effect from 12.06.2019. The petitioner seeks payment of earned leave salary and leave salary on private affairs. Since his request for encashment has not been considered, the present writ petition came to be filed.

3. The learned counsel appearing for the writ petitioner took me through the averments set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned order and allow this writ petition as prayed for.

4. Per contra, the learned Government Pleader submitted that in view of the amendment made to the



Fundamental Rules and the Tamil Nadu Leave Rules vide G.O.

(Ms)No.100 Human Resources Management (FR.II)

Department dated 07.09.2022, the petitioner's prayer cannot be countenanced.

5. I carefully considered the rival contentions and went through the materials on record.

6. The issue on hand was considered by the Hon'ble Full Bench of Madras High Court in ***W.A.No.4018 of 2019*** vide Order dated ***22.11.2019 (The Chief Secretary to Government, Public (Special A) Department, Chennai V. M.Uthiraswamy)***. The Hon'ble Full Bench has held as follows:-

“ 16. Employees Contribution to Provident Fund and leave which has been earned by him (not encashed) are the property of the employee, they cannot be taken away, without due process of law, as enshrined, under Article 300 A of the Constitution of India. There is nothing in the Rules which has been relied by the learned Government Pleader which will



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enable the Government to withhold the Employee's own contribution to Provident Fund and encashment of accumulated earned leave when the Government servant has attained the age of superannuation. These amounts have to be given to the Government servant, even if the criminal proceedings culminate against the Government servant and the Government servant is terminated from service. If these amounts cannot be forfeited even on termination, there is no justification in withholding the same during the continuation of criminal proceedings after the Government servant has attained the age of superannuation. "

7. It is true that in view of the aforesaid amendment made in G.O.(Ms)No.100 Human Resources Management (FR.II) Department dated 07.09.2022, the Government servants who are dismissed or removed from service or who have resigned from service shall not be eligible for encashment of earned leave and leave on private affairs. This amendment came into force only with effect from 07.09.2022. The petitioner's case arose much earlier. Therefore, the issue



is governed by the Hon'ble Full Bench decision. The amendment made to the fundamental Rule and the Tamil Nadu Leave Rules 1933 cannot be retrospectively applied to the prejudice of the writ petitioner. In that view of the matter, the impugned order is set aside. The respondents are directed to settle the monetary benefits arising in terms of earned leave salary and leave salary on private affairs. This monetary settlement shall be made within a period of twelve weeks from the date of receipt of a copy of this order. This writ petition stands allowed. No costs.

19.09.2022

Index : Yes / No

Internet : Yes/ No

PMU

To:

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G.R.SWAMINATHAN,J.

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