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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.3063 of 2023

K.Ramasamy

Petitioner

vs.

1.The Registrar of Co-operative Societies,
Kilpauk, Chennai – 600 010.

2.The Joint Registrar of Co-operative Societies,
Salem Region, Collectorate Office,
Salem – 1.

3.The Deputy Registrar of Co-operative Societies,
Attur Circle, Attur,
Salem District – 636 102.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 2nd Respondent to forthwith pay the Encashment of earned leave and unearned leave on Private affairs.

For Petitioner : Mr.K.Raja for
Mr.N.Koladaivelu

For Respondents : Mr.D.Ravichander
Special Government Pleader

**ORDER**

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This writ petition has been filed for issue of writ of mandamus directing the 2nd respondent to pay the encashment of earned leave and unearned leave on private affairs based on the representations made by the petitioner on 08.11.2022 and 23.12.2022.

2.The case of the petitioner is that he was working as a Co-operative Sub Registrar/Field Officer in Pethanaikanpalayam Society. The petitioner was placed under suspension by the 2nd respondent through proceedings dated 23.07.2018. Disciplinary proceedings were also initiated under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules and charge memo was issued to the petitioner on 24.11.2014. The petitioner was not permitted to retire from service through proceedings dated 31.07.2018.

3.The petitioner was making repeated representations to the respondents for encashment of earned leave and unearned leave on private affairs. Since the same was not considered, the present writ petition has been filed before this Court.



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4. Heard Mr.K.Raja, learned counsel appearing on behalf of the petitioner and Mr.D.Ravichander, learned Special Government Pleader appearing on behalf of the respondents.

5. In the considered view of this Court, the issue that is involved in the present writ petition is squarely covered by the earlier order passed by this Court in W.P.No.35328 of 2019, dated 06.01.2020, wherein, this Court relied upon the earlier Division Bench order. For proper appreciation, the relevant portions of the order are extracted hereunder:

6. It is clear from the above judgment that Encashment of leave salary, Special Provident Fund and General Provident Fund are considered to be the personal property of the employee and it is payable even in cases where an employee is terminated from service. These monetary benefits cannot be retained by an employer citing pendency of disciplinary proceedings. The facts of the present case will squarely fall within the dictum laid down by the Division Bench.

7. In view of the above, there shall be a direction to



the 2nd respondent to consider the representation made by the petitioner on 03.12.2018 and 18.11.2019 and pass necessary orders within a period of six weeks and pay the Encashment of earned leave and unearned leave on Private Affairs, Special Provident Fund and General Provident Fund to the petitioner. The petitioner is directed to made a fresh representation along with a copy of the representations dated 03.12.2018 and 18.11.2019 along with a copy of this order.

6.The pending disciplinary proceedings as against the petitioner, even if it ultimately ends up in a punishment, will not deprive the petitioner of his right to encash the earned leave and unearned leave on private affairs. These payments are considered to be the personal property of the employee and it cannot be retained by the employer citing pendency of disciplinary proceedings.

7.In the light of the above, there shall be a direction to the 2nd respondent to consider the representations made by the petitioner on 08.11.2022 and 23.12.2022 in the light of the observations made herein above and a decision shall be taken, within a period of four weeks from the date of receipt of copy of this order. The petitioner is directed to



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6

N. ANAND VENKATESH, J.

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W.P No.3063 of 2023

06.02.2023