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WP.No.8795/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.8795/2018 & WMP.No.10666/2018

V.Gajapathy

... Petitioner

Versus

**1.Government of Tamilnadu
rep.by its Principal Secretary
Transport Department
Fort St George, Chennai 600 009.**

**2.The Institute of Road Transport
rep.by its Director, Taramani,
Chennai 600 113.**

**3.The Governing Council
Institute of Road Transport
Taramani, Chennai 600 113.**

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records pertaining to the order of the 2nd respondent/3rd respondent in proceedings No.2552/A1/2002-1 dated 09.09.2003 and proceedings No.2532/A1/IRT/2002, dated 24.01.2005 and all other connected records and quash the same insofar as allowing the encashment of sick/medical leave only at the rate of basic pay and dearness allowance as on 01.09.1998 at the time of retirement and insofar as withdrawing the encashment of sick/medical leave at the time of retirement retrospectively with effect from



WP.No.8795/2018

01.09.1998 and deleting Rule 4[f] of the IRT Leave Rules respectively and consequently direct the respondents to pay the petitioner a sum of Rs.1,91,100/- towards encashment of sick/medical leave for 156 days, which accrued to his credit upto 31.08.1998 based on the rate of basic pay and dearness allowance paid to him as on the date of his retirement, together with interest at the rate of 12% per annum from the date of the petitioner retirement till it is actually paid to the petitioner, award costs.

For Petitioner	:	Mr.R.Krishnaswamy
For R1	:	Mr. S.Ravikumar, Spl.GP
For RR2&3	;	M/s.Kala Ramesh

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking records relating to the orders of the respondents 2 and 3 / Director and the Governing Council of the Institute of Road Transport, at Chennai in Proceedings dated 09.09.2003 and 24.01.2005 respectively and to quash the same and to allow encashment of sick/medical leave at the rate of basic pay and dearness allowance as on 01.09.1998 at the time of retirement, and permitting withdrawing the encashment of sick/medical leave at the time of retirement retrospectively with effect from 01.09.1998.
- (2) The respondents 2 and 3/Institute of Road Transport is a Society



WP.No.8795/2018

WEB COPY

registered under the Indian Societies Registration Act, 1860. It is however controlled by the Government of Tamil Nadu. It conducts research studies relating to transport sector to improve not only the transport sector but also facilities provided to the passengers who avail such transport.

(3) It is stated that the petitioner herein had joined the 2nd respondent Institute as Junior Assistant on 11.07.1980 and he retired on attaining the age of superannuation as Office Superintendent on 31.12.2011. he had during his service, availed practically every leave which is granted to a Government servant and as a matter of fact, also not left out medical leave. He seeks to encash the unavailed balance medical leave and convert that particular leave to cash. The order which is now impugned in the present writ petition, did not permit that. The writ petition has been filed seeking encashment of unavailed medical leave.

(4) I am informed that the issue is no longer *res integra* insofar as encashment of medical leave is concerned and a common order in that direction was passed in WP.Nos.20994 and 20995/2008 dated



WP.No.8795/2018

21.11.2016 ***[K.V.Neelakandan and Pallom Baalaiah Vs. The Special Commissioner and Secretary to Government, Transport Department, Chennai and Others]***. A learned Single Judge had examined the very same issue relating to encashment of sick leave with retrospective effect from 01.09.1998 and after examining all the issues which had been raised by either side, had finally held as follows:-

"14.In the result, the impugned order dated 24.01.2005 passed by the 3rd respondent, insofar as clause [2] of the said order, in respect of the petitioners alone, is quashed and the writ petitions are allowed.

15.The petitioners shall be entitled to encash the sick leave accrued in their account earned between 01.09.1998 and 24.01.2005. The amount payable by encashing the accrued sick leave between the said period be paid by the 3rd respondent to the petitioners, within a period of eight weeks from the date of receipt of a copy of this order. With these above directions and observations, the writ petitions are allowed. No costs. Consequently, connected miscellaneous



WP.No.8795/2018

petitions are closed."

- (5) It is stated the issue relating to interest on such payment, which was according to the petitioner, delayed, is an issue which is now pending consideration before a Division Bench in WA.Nos.718 and 720/2022.
- (6) In this very writ petition, by a direction dated 25.07.2022, the respondents had been directed to extend the benefit to the petitioner herein as directed by the Division Bench by an order dated 17.03.2022, within a period of three months from that particular date.
- (7) I am also informed by the learned counsel for the respondents that the petitioner herein had been granted such relief.
- (8) In view of that, nothing further survives for adjudication so far as the claim in the writ petition is concerned. However, let me keep the issue of interest open and according to the decision taken by the Division Bench in WA.Nos.718 and 720/2022, even if the petitioner herein has not preferred any appeal or has not joined in the appeal proceedings, if any benefit is granted, it will also enure to the petitioner herein.
- (9) Observing as above and holding the same relief to be granted to the



WP.No.8795/2018

petitioner herein, but extending the time limit to sixteen weeks, the writ petition stands **disposed of**. No costs. Consequently, connected miscellaneous petition is closed.

17.08.2023

AP

Internet : Yes

To

1.The Principal Secretary
Government of Tamilnadu
Transport Department
Fort St George, Chennai 600 009.

2.The Director,
Institute of Road Transport,
Taramani, Chennai 600 113.

3.The Governing Council
Institute of Road Transport
Taramani, Chennai 600 113.

C.V.KARTHIKEYAN, J.,

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WEB COPY



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WP.No.8795/2018

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