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W.P. No. 9224 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 9224 of 2020

and

W.M.P. No. 11252 of 2020

P.Krishnan
Petitioner

...

-VS-

1. The Commissioner of Employment and Training,
Guindy,
Chennai – 600 032.
2. The Regional Joint Director of Employment,
Coimbatore.
3. The District Employment Officer,
Erode – 9.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the Third Respondent relating to Proceedings No. A1/55/2018 dated 29.07.2019 and A1/4639/2019 dated 24.02.2020, quash the same and to issue consequential directions to the Respondents to sanction and disburse encashment of surrender of Earned Leave of 240 days and Unearned leave of 180 days at the credit of the Petitioner as on 31.05.2019 and disburse the monetary benefits thereof within a limited time frame.



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For Petitioner : Mr. M.Ravi
For Respondents : Mrs. R.Anitha,
Special Government Pleader

ORDER

Heard Mr. M.Ravi, Learned Counsel for the Petitioner and Mrs. R.Anitha, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, while working as Junior Employment Officer, was arrested on 27.06.2014 and placed under suspension by Order No. A4/3071/2014 dated 30.06.2014 passed by the Second Respondent. Since the Petitioner was attaining the age of superannuation on 31.05.2019, and the criminal prosecution against him had not been completed by then, the First Respondent by Proceedings No. NIR3/8023/2019 dated 29.05.2019 directed that the Petitioner shall not be permitted to retire on attaining the age of superannuation on the said date, but retained in service by extending his superannuation period under Rule 56(1)(c) of the Fundamental Rules till final orders are passed in the charges pending against him. It was further directed in



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that order that the service rights of the Petitioner shall freeze at the level reached on the date of superannuation, viz., 01.06.2019 and the salary during that period shall not exceed the amount of pension which would be accrued to him on that date. The Petitioner then made a representation dated 11.12.2019 for payment of General Provident Fund, Special Provident Fund and encashment of earned leave and unearned leave, which was rejected in Proceedings No. A1/4639/2019 dated 24.02.2020 passed by the Assistant Director, District Employment and Career Guidance Centre, Erode, which is challenged in this Writ Petition.

3. At this juncture, it would be useful to refer to the decision of the Division Bench of this Court in the ***State of Tamil Nadu -vs- V.Mahalingam*** (Order dated 10.04.2019 in W.P. No. 1285 of 2019) in which the legal position has been explained 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



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*Servant shall be credited with earned leave in advance in two instalments of fifteen days each on 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 [(2013) 12 SCC 210]** has made it abundantly clear that leave encashment*



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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 or 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



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pay the earned leave to the Petitioner, which he was

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In such circumstances, it is not possible to accept the explanation of the Respondents for withholding the Earned Leave and Unearned Leave on Private Affairs of the Petitioner, and the Respondents are bound to make payment of those monetary benefits immediately along a working-sheet showing the calculation under written acknowledgment within 30 days from the date of receipt of copy of this order and file a report of compliance in that regard before the Registrar (Judicial) of this Court.

4. Learned Counsel for the Petitioner further states that in respect of other emoluments, the Petitioner reserves his right to work out his remedies before the proper forum in the manner recognized by law and no view has been expressed by this Court on the entitlement of the Petitioner for those benefits in this order.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

05.04.2023

Maya

Index: Yes/No



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NCC: Yes/No

Note: Issue order copy by 05.06.2024.

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To

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1. The Commissioner of Employment and Training,
Guindy,
Chennai – 600 032.
2. The Regional Joint Director of Employment,
Coimbatore.
3. The District Employment Officer,
Erode – 9.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai – 600104.



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P.D. AUDIKESAVALU, J.

Maya

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