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W.P.No.16353 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.16353 of 2020

C.Ponnusamy

/vs/

...

Petitioner

1. The Commissioner,
Mettur Municipality,
Salem District – 636 401.

2. The Director,
O/o. Director of Municipal Administration,
Chepauk, Chennai – 600 005.

3. The District Collector,
Salem District, Salem.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to pay to the petitioner all his pensionary benefits either calculating his services prior to regularization and in case he is not eligible for that to pay under Contributory Pension Scheme besides Gratuity and surrender of 180 days unearned leave with interest @ 12% p.a.



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For Petitioner ... Ms.P.Srividhya
For Respondents ... Mr.G.Nanmaran
Special Government Pleader for R2&3
Mr.Maurya
Standing Counsel for R1

ORDER

This Writ Petition has been filed for the issuance of Writ of Mandamus to direct the respondents to pay to the petitioner all his pensionary benefits either calculating his services prior to regularization and in case he is not eligible for that to pay under Contributory Pension Scheme besides Gratuity and surrender of 180 days unearned leave with interest @ 12% p.a.

2. The learned counsel appearing for the petitioner referred to the proceedings of the first respondent/The Commissioner, Mettur Municipality, dated 31.01.2019 in which it is stated that the petitioner is entitled for Earned Leave salary for 135 days and Unearned Leave Salary for 180 days vide proceedings in Na.Ka.No.2741/2017/E1. Subsequently, a counter was filed by the Commissioner, Mettur Municipality dated 14.12.2022, in which it is categorically stated that the petitioner is not eligible for any type of Earned Leave. For better appreciation, the relevant paragraph of the counter



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is extracted hereunder:

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"7. I respectfully submit earned leave was sanctioned to the petitioner and Unearned leave on private affairs cannot be granted to the petitioner in view of the Rule 13 and 14 of Tamil Nadu Leave Rules since last grade servants who have served for a minimum of 15 years whereas the petitioner herein has served as a Road Worker only for 11 years and 4 months and therefore, earned leave cannot be granted to the petitioner."

3. It is learnt from the additional counter affidavit of the first respondent that the order of the first respondent dated 31.01.2019 has been wrongly passed without application of mind. It is submitted by the learned Standing Counsel for the first respondent that the first respondent had addressed the second respondent seeking clarification on this order.

4. The second respondent's clarification is only with regard to the entitlement of the petitioner to get the benefits. Since the second respondent need to clarify about the eligibility of the petitioner, I feel it is appropriate to direct the second respondent to give appropriate advice to the first respondent and direct him to dispose the representation of the petitioner.

5. In the result, this Writ Petition is disposed and the second



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respondent is directed to offer clarification as requested by the first respondent by his letter dated 02.11.2023 and send necessary advice to the first respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the clarification, the first respondent shall pass appropriate orders in accordance with the advice received from the second respondent, within a period of three weeks therefrom. No costs.

07.11.2023

Index: Yes / No
Speaking order / Non-speaking order
bkn

To:

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R.N.MANJULA ,J.

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