



W.P.(MD).No.21905 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2023

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.21905 of 2022

R.Nagarajan

... Petitioner

Vs.

1.The Inspector General of Police,
Central Zone,
Trichy-621 004.

2.The Deputy Inspector General of Police,
Trichy Range,
Trichy.

3.The Superintendent of Police,
Karur District,
Karur.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings issued by the third respondent vide proceedings in Na.Ka.No.G5/6639/2017, dated 07.09.2022 and quash the same as illegal and unconstitutional and consequently directing the third respondent herein to disburse the petitioner's encashment of earned leave and unearned leave on private affairs of petitioner's contribution is concerned.



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For Petitioner : Mr.P.Mahendran

For Respondents : Mr.J.Ashok
Additional Government Pleader

ORDER

The present writ petition has been filed by a retired Special Sub Inspector of Police challenging an order passed by the third respondent herein, wherein the request of the petitioner for encashment of Earned Leave and Leave on Private Affairs was rejected.

2. According to the learned Counsel appearing for the writ petitioner, the petitioner was about to retire on 28.02.2017 but he was placed under suspension on 24.02.2017 and an order retaining him in service was also passed. These orders have been passed in view of pendency of criminal proceedings in Crime No.10 of 2016 under Prevention of Corruption Act, 1988.

3. The petitioner had given a representation on 21.06.2022, requesting the employer for disbursement of the Earned Leave and Leave on Private Affairs. Since the request was not considered, the petitioner had filed W.P(MD)No.17271 of 2022 seeking a Mandamus as against the authorities.



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This Court by an order, dated 03.08.2022 had directed the third respondent herein to consider the said representation and pass orders on merits within a period of eight (8) weeks. In compliance with the orders of this Court, the present impugned order has been passed by the third respondent on 07.09.2022.

4. A perusal of the impugned order indicates that the request of the petitioner for disbursal of Earned Leave and Leave on Private Affairs was rejected on the ground it is not permissible under Rule 86 (a) of the Tamil Nadu Government Fundamental Rule. A perusal of FR 86 (a) indicates that there is no prohibition for disbursement of the encashment of Leave Salary and Leave on Private Affairs. The Hon'ble Division Bench of this Court has also while interpreting FR 86 (a) in a judgment reported in **2019 (5) CTC 19 (Secretary to Government, Revenue Department and Others Vs. K.Palaniyandi)** has held that there is no bar for disbursing the encashment of Earned Leave and Leave on Private Affairs even in a case where, the employee is retained in service and facing departmental proceedings. Therefore, the reason assigned by the third respondent herein in the impugned order for rejecting the request for disbursal of the concerned benefits is not legally sustainable.



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5. The learned Additional Government Pleader appearing for the respondents brought to the notice of the Court that the Government has amended FR 86 (a) by introducing a proviso Clause 2, Rule 86 (a) (iii) to the effect that as far as the encashment of Earned Leave and Leave on Private Affairs shall be deferred to those Government servants, who have not been permitted to retire on attaining the age of superannuation. The learned Additional Government Pleader also brought to the notice of the Court that the judgment of the Hon'ble Division Bench of this Court, dated 10.10.2023 in a batch of writ appeals in ***W.A(MD)Nos.264 of 2022 etc., (The Agricultural Production Commissioner and Principal Secretary to Government and Others Vs. B.Meenakshi Sundaram)*** to the effect that the said amendment to the fundamental rules are retrospective in nature covering all those employees, who are retained in service on the date of G.O(Ms)No.100 of the Human Resources Management (FR.II) Department, dated 07.09.2022.

6. In view of the above said discussions, it is clear that the order impugned in the writ petition relying upon a wrong provision of law, namely FR 86 (a) without considering G.O(Ms)No.100, dated 07.09.2022. Therefore, the order impugned in the writ petition is set aside and the matter is



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remitted back to the file of the third respondent herein for fresh consideration in the light of observations made above.

7. This writ petition stands allowed to the extent as stated above. There shall be no order as to costs.

16.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Inspector General of Police,
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- 2.The Deputy Inspector General of Police,
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- 3.The Superintendent of Police,
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R.VIJAYAKUMAR, J.

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