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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.16895 of 2016

L.Esakki Raja

... Petitioner

- Vs. -

1. The Secretary to Government,
Labour and Employment Department,
Chepak, Chennai-09.
2. The Director,
Department of Employment and Training,
Guindy, Chennai-32.
3. The Joint Director Crafts Man Training Scheme,
Department of Employment and Training,
Guindy, Chennai-32.
4. The Principal,
Government Industrial Training Institute(ITI),
Pettai, Tirunelveli.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the 2nd respondent in Na.Ka.No. 33101/Tho.Nu.Pa 5/2015, dated 13.04.2016 and quash the same and consequently direct the respondents to count



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the period of study leave as service for promotion, pension, seniority, and incentives as contemplated under Rule 21 of the Tamil Nadu Study Leave Rules, 1965, and disburse all service and monetary benefits.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.R.Suresh Kumar,
Additional Government Pleader

ORDER

This writ petition is filed for Writ of Certiorarified Mandamus, to quash the impugned order, dated 13.04.2016 with a consequential direction to the respondents to count the period of study leave as service for promotion, pension, seniority, and incentives as contemplated under Rule 21 of the Tamil Nadu Study Leave Rules, 1965, and disburse all service and monetary benefits.

2. Heard Mr.H.Arumugam, the Learned Counsel appearing for the petitioner and Mr.R.Suresh Kumar, the Learned Additional Government Pleader appearing for the respondents and perused the material documents available on records.



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3. The petitioner had joined service in the year 2001. In the year 2009, the petitioner has applied for Study leave in order to pursue Master of Engineering (Design) for a period of two years. The petitioner was granted study leave as Contemplated under “Rule 3” of the Tamil Nadu Study Leave Rules 1965, framed as per Rule 84 of the Fundamental Rules. Initially, for a period of one year the 3rd respondent has granted, vide order, dated 29.07.2009 with a direction to apply for the second year on completion of first year and also on production of Course Completion Certificate. After completion of the first year along with Course Completion Certificate the petitioner submitted application requesting for extension of study leave for doing second year and the same was considered by the 3rd respondent and granted leave. Subsequently, the 1st respondent by relaxing the Fundamental Rule 18(2) regularized the study leave as leave on loss of pay.

4. The government employee is entitled to study leave under the Fundamental Rule 18 and the said FR 18 (1) and (2) states that,



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*“18(1) Except on medical certificate or study leave under rule 84 no government servant (permanent or Approved Probationer), who **has not completed** five years of service shall be granted leave of any kind for a continuous period exceeding **six months** at any one time.*

*18(2) Except on medical certificate or study leave under rule 84 no government servant (permanent or Approved Probationer), who **has completed** five years of service shall be granted leave of any kind for a continuous period exceeding **one year** at any one time.*

If the employee had not completed five years, he is entitled to six months leave on medical certificate or study leave. If the employee had completed five years, he is entitled to one year leave on medical certificate or study leave.

5. The contention of the respondents that the petitioner had not applied for study leave hence the petitioner is not entitled to. This contention cannot be entertained since the petitioner had applied for study leave for two years and the respondents had granted the same for first year with a condition to submit course completion certificate for extension of study for second year.



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Moreover, any application submitted for study leave ought to be considered under the FR 84 only and the contention of the respondents that the same was not granted under Study Leave Rules is erroneous. Therefore, the plea of the respondents ought to be rejected.

6. The next contention of the respondents that the petitioner sought study leave for perusing the course of M.Tech. at Arulmigu Kalasalingam University but had joined the course of M.E. at K.S. Rengasamy Engineering College. However, this fact was known to the respondent at the time of extension of study leave for second year and hence the same cannot be cited as reason for denying increment.

7. The next contention of the respondents that the petitioner is coming under “C” category and he is not eligible for pursuing higher studies. Further the petitioner was granted “Extraordinary Leave Without Pay and Allowances” on humanitarian grounds and the same was granted only on the petitioner’s request and to encourage the staff, but not as study leave under FR



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84(3). Such contention of the respondents cannot be accepted, since all these reasons are stated in the counter but was not stated in the sanction order. Hence the reasons stated in the counter are invented for the sake of denying increment.

8. The contention of the petitioner that the FR 84 is an exception to FR18(2). However, the respondents are refuting the contention of the petitioner. On perusal of the FR 84 it is seen that the same is framed as Tamil Nadu Study Leave Rules 1965, framed under Rule 84 of the Fundamental Rules consists of Rules 1 to 24. The said rules deals with the title of the rules, definition, conditions to grant study leave, competent authority, maximum amount of study leave, combination of other leave, regulation of study leave extending beyond course of study, grant of allowance and conditions for allowances, grant of travelling allowances, execution of bond, resignation and retirement, leave salary during leave, counting of study leave for promotion, pension, seniority and increments, debiting of study leave, procedure of making application and saving clause.



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9. The FR 18 also deal with the same subject of Study Leave. But the scope is eligibility alone. As stated earlier, if the employee had not completed five years, he is entitled to six months leave on medical certificate or study leave. If the employee had completed five years, he is entitled to one year leave on medical certificate or study leave. In the present case the petitioner had served for more than five years and hence he is entitled to study leave for more than one year as per FR 18.

11. On comparing the FR 84 and FR 18, this Court is of the considered opinion that both deals on their respective area. Even if it is considered there is overlapping of provisions, when there are two rules dealing with the subject then the one which has dealt with specifically would prevail over the other, since specific law will prevail over general law. Therefore, this Court is of the considered opinion that the petitioner is protected under FR 84 and he is entitled to increments.



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12. Moreover, the Fundamental Rule 18(2) only states generally the government employee is not entitled to continuous leave for one year but is entitled to continuous leave under medical certificate or under study leave. Further under FR 18(4) it states that if the employee after such long leave did not join after the expiry of the leave, then the said employee shall be removed from service. And the period of absence which exceeds the limit of eligible leave shall be treated as non-duty. All these would mean that the sanctioned study leave cannot be considered as non-duty period, consequently they cannot be denied the increments, promotion, pension and seniority. Therefore, this Court is of the considered opinion that the petitioner is entitled to increments and the impugned order is liable to be quashed. Accordingly, the impugned order is quashed and the respondents are directed to grant increment within a period of 12 weeks from the date of receipt of a copy of the order.



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13. With these observations and directions, this Writ Petition is allowed. There shall be no order as to costs.

Index : Yes / No
Internet : Yes
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To

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S.SRIMATHY, J

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