



W.P. No.21932 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.21932 of 2013

1.S.K.Maran

2.P.Subbarayan

3.K.Mohanasundaram

4.B.Vishak Senan

... Petitioners

Vs.

1.State of Tamilnadu,
Represented by its Secretary to Government,
Finance (Pension) Department,
Fort St. George,
Chennai – 600 009.

2.The Additional Secretary to Government,
Finance (PBE) Department,
Fort St George,
Chennai – 600 009.

3.Tamilnadu Civil Supplies Corporation Limited,
Represented by its Managing Director,
No.42, Thambusamy Road,
Kilpauk, Chennai – 600 010.

Respondents

...



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Declaration declaring the Circular of the third respondent Corporation dated 31.03.2008 bearing Ref.No. AE10/18900/2008 Circular SI.No.45/2008 null and void as illegal in as much as it limits the benefits conferred in G.O.M.S.No. 488 dated 12.08.1996 only with effect from 28.01.2008 and consequently direct the third respondent Corporation to grant the benefits of encashment of entire earned leave on private affairs and full leave encashment facilities to the petitioners and to pay the amounts due to the petitioners with interest at the rate of 18% per annum from the date on which the amounts became due till the date of disbursal.

For Petitioners : Mr.Tarang K.Sancheti for
Mr.T.Saikrishnan
For R1 to R3 : Mr.Vadivelu Deenadayalan
Additional Government Pleader.

ORDER

This writ petition has been filed, by the petitioners who are already retired from service on attaining the age of superannuation from the 3rd respondent Corporation, challenging the Circular SI.No.45/2008 dated 31.03.2008 insofar as fixing cut off date as 28.01.2008 for the purpose of extending the benefits of encashment of unearned leave on private affairs, etc., to the employees of the 3rd respondent Corporation.

2. Heard Mr.Tarang K.Sacheti, learned counsel for the petitioner



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and Mr.Vadivelu Deenadayalan, learned Additional Government Pleader for the respondents.

3. The learned counsel for the petitioner contended that by virtue of the Letter No.37568/BPE/2006 dated 28.01.2008, the Government gave instructions extending the benefits provided under G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996 to the employees of all Statutory Boards and Public Sector Undertakings who are getting Government scales of pay and accordingly, the 3rd respondent Corporation has passed Board Resolution dated 28.03.2008 resolving to adopt the scheme of encashment of unearned leave on private affairs as ordered in G.O.Ms.No.488 Finance (Pension) Department, dated 12.08.1996 to the employees of the 3rd respondent Corporation with effect from the date of issue of order i.e., 28.01.2008. As the petitioners herein were already retired from service much prior to 28.01.2008, the petitioners are aggrieved with the said Circular approached this Court questioning the fixing of cut off date as 28.01.2008.

4. The learned counsel for the petitioner further contended that the 3rd respondent Corporation has no option to fix the cut off date and in terms



of Paragraph 4 of the Letter dated 28.01.2008, the 3rd respondent is bound to extend the benefits of G.O.Ms.No.488 dated 12.08.1996. He also further contended that the impugned circular itself in last paragraph shows that all the State Public Sector Undertakings/Boards are therefore requested to act accordingly as per orders issued in G.O.Ms.No.488, dated 12.08.1996 and therefore, fixing cut off date as 28.01.2008 is contrary to the said orders.

5. On the other hand Mr.Vadivelu Deenadayalan, learned Additional Government Pleader contended that the Government only gave an option to all the Statutory Boards and Public Sector Undertakings to adopt the order issued in G.O.Ms.No.488, dated 12.08.1996 and hence, it is for the Boards/Public Sector Undertakings to adopt or not to adopt or to fix cut off date

6. This Court has carefully considered submissions made by the learned counsel on either side.

7. The instructions issued by the Government in its Letter dated 28.01.2008 reads as under:

“The scheme of encashment of Unearned Leave on



Private Affairs ordered in G.O.Ms.No.488, Finance (Pension) Department, Dated 12.08.1996 for Government Servants may also be extended to the employees of all Statutory Boards and State Public Sector Undertakings who are getting Government scales of pay, but not to the employees who are governed by periodic wage settlement under Industrial Dispute Act, subject to the condition that the concerned Board / State Public Sector Undertakings should not seek financial assistance from the Government for this purpose.”

8. From the perusal of the above, it is evident that the Government while issuing instructions as above, only granted liberty to the Statutory Boards and Public Sector Undertakings to extend the benefits of G.O.Ms.No.488 dated 12.08.1996 to its employees, if its employees are drawing Government Scales of pay. However, it is also clarified in paragraph 4 of the instructions that the same be given effect from the date of issue of order. The paragraph 4 of the instructions undoubtedly, refers to the date of instructions only, but not the date of Government order issued in G.O.Ms.No.488 dated 12.08.1996. But the contention of the learned counsel for the petitioner that the reference made in paragraph 4 of the instructions, to



the 'issue of order' is that of the G.O.Ms.No.488 dated 12.08.1996 cannot be accepted and the same would leads to absurd interpretation of the said paragraph. The very instructions dated 28.01.2008, speaks of instructions and the instructions that is referred to paragraph 4, is also refers to the very same issue, through Letter dated 28.01.2008 but not the Government order issued in G.O.Ms.No.488 dated 12.08.1996.

9. Be that as it may, by issuing instructions through Letter dated 28.01.2008, the Government had only enabled the Statutory Board and State Public Sector Undertakings to extend the benefits of G.O.Ms.No.488 dated 12.08.1996 to its employees who are getting the Government scales of pay and also made it clear that the Statutory Boards, State Public Undertakings should not seek financial assistance from the Government for the said purpose. If that be the case, it is for the respective Statutory Boards and State Public Sector Undertakings like the 3rd respondent herein, whether to adopt the G.O.Ms.No.488 dated 12.08.1996 to its employees or not? and if it decides to adopt, from what it should be given effect etc, all depending upon financial resources of the 3rd respondent. The language used is “may also be extended”. Hence, it only an enabling provision.



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10. In the instant case, the 3rd respondent having passed resolution has chosen to give effect to said resolution with effect from 28.01.2008, the date on which the Government enabled the Statutory Boards and State Public Sector Undertakings to adopt the orders issued in G.O.Ms.No.488 dated 12.08.1996. The stand of the petitioners that the instructions issued in Letter dated 28.01.2008 would come into force with effect from the date on which the Government Order in G.O.Ms.No.488 dated 12.08.1996 is liable to be rejected, especially, taking into consideration, the language used in the Letter dated 28.01.2008. Further, all the petitioners herein cease to be employees of the respondent Corporation much prior to issuance of the instructions dated 28.01.2008 and therefore, persons who cease to be employees of the 3rd respondent Corporation does not have any right to claim any benefits, orders issued after they retired from service.

11. In the light of the above, this Court does not find any merit in the writ petition and the same is accordingly dismissed. The connected miscellaneous petitions, if any shall stand closed. No costs.

04.10.2024



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Index : Yes/No
Speaking Order : Yes/No
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To

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Finance (Pension) Department,
Fort St. George,
Chennai – 600 009.
- 2.The Additional Secretary to Government,
Finance (PBE) Department,
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Chennai – 600 009.
- 3.The Managing Director,
Tamilnadu Civil Supplies Corporation Limited,
No.42, Thambusamy Road,
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MUMMINENI SUDHEER KUMAR,J.

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