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W.P.Nos.7132, 7134, 7136 and 7137 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.7132, 7134, 7136 and 7137 of 2021

W.P.No.7132 of 2021

G.Sukumaran

... Petitioner

Vs.

1. The Secretary to Government,
Animal Husbandary Dairying and Fisheries Department,
Fort St. George, Chennai – 600 009.

2. The Managing Director,
Tamil Nadu Co-operative Milk Producers Federation Ltd.,
Aavin House, Pasumpon Muthuramalingam Salai,
Nanadanam, Chennai – 600 035.

3. The Joint Managing Director,
Tamil Nadu Co-operative Milk Producers Federation Ltd.,
Nos.28 & 29, Ambattur Industrial Estate,
Chennai – 600 098.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to disburse the earned leave calculated at the rate of 32 days per year from 01.01.1990 till the date of the petitioner's retirement together with interest @ 18% P.A for the delayed period from 30.06.2019 till the date of payment at the earliest.



W.P.No.7134 of 2021

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S.Sethumadhavan

... Petitioner

Vs.

1. The Secretary to Government,
Animal Husbandary Dairying and Fisheries Department,
Fort St. George, Chennai – 600 009.
2. The Managing Director,
Tamil Nadu Co-operative Milk Producers Federation Ltd.,
Aavin House, Pasumpon Muthuramalingam Salai,
Nanadanam, Chennai – 600 035.
3. The Joint Managing Director,
Tamil Nadu Co-operative Milk Producers Federation Ltd.,
Nos.28 & 29, Ambattur Industrial Estate,
Chennai – 600 098.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to disburse the amount of 90 days of private Affairs leave Encashment besides earned leave calculated at the rate of 32 days per year 01.01.1990 till the date of petitioner retirement together with interest @ 18% P.A for the delayed period from 28.10.2010 till the date of payment at the earliest.

W.P.No.7136 of 2021

K.Mani

... Petitioner

Vs.



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1. The Secretary to Government,
Animal Husbandary Dairying and Fisheries Department,
Fort St. George, Chennai – 600 009.

2. The Managing Director,
Tamil Nadu Co-operative Milk Producers Federation Ltd.,
Aavin House, Pasumpon Muthuramalingam Salai,
Nanadanam, Chennai – 600 035.

3. The Joint Managing Director,
Tamil Nadu Co-operative Milk Producers Federation Ltd.,
Nos.28 & 29, Ambattur Industrial Estate,
Chennai – 600 098.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to disburse the amount of 90 days of private Affairs leave Encashment besides earned leave calculated at the rate of 32 days per year 01.01.1990 till the date of petitioner retirement together with interest @ 18% P.A for the delayed period from 31.05.2014 till the date of payment at the earliest.

W.P.No.7137 of 2021

1. M.G.Srinivasan (Deceased)
2. V.Mala
3. Narayanan
4. Karpagam

... Petitioners

[P2 to P4 substituted as LR's of deceased sole petitioner vide order dated 07.01.2022 made in W.M.P.No.19046 of 2021]

Vs.

1. The Secretary to Government,



Animal Husbandary Dairying and Fisheries Department,
Fort St. George, Chennai – 600 009.

2. The Managing Director,
Tamil Nadu Co-operative Milk Producers Federation Ltd.,
Aavin House, Pasumpon Muthuramalingam Salai,
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Nos.28 & 29, Ambattur Industrial Estate,
Chennai – 600 098.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to disburse the amount of 90 days of private Affairs leave Encashment besides earned leave calculated at the rate of 32 days per year 01.01.1990 till the date of petitioner retirement together with interest @ 18% P.A for the delayed period from 28.10.2014 till the date of payment at the earliest.

In all Writ Petitions

For Petitioners : Mr.S.Mohan

For R1 : M/s.E.Ranganayaki,
Additional Government Pleader

For R2 : Mr.A.Selvendran

For R3 : Mr.R.Neelakandan,
Additional Advocate General
assisted by Mr.Balaramesh



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COMMON ORDER

The issue that arise for consideration in all these writ petitions is one and the same and as such, they are taken up together for hearing and are being disposed of by this common order.

2. The petitioners in these writ petitions, who were appointed as 'Technical Staff' in the Respondent No.3/ Federation filed these writ petitions seeking writ of mandamus, directing the respondents to disburse the amount of 90 days of private affairs, leave encashment besides earned leave calculated at the rate of 32 days per year with effect from 01.01.1990 till the date of retirement together with interest at the rate of 18% per annum for the period on delay.

3. Though, a claim is made by the petitioners in these Writ Petitions as above, there is no sustainable basis for such claim is pleaded in the affidavit filed in support of these Writ Petitions. However, during the course of hearing, the learned counsel for the petitioners placed before this Court a copy of G.O (Ms) No.999, Personnel and Administrative Reforms (FR-III) Department, dated 30.10.1987 and the proceedings bearing



Ref.No.3017/Pers/Estt.8/58, dated 15.04.1990 issued by the Respondent No.3 in support of their contention. The said G.O (Ms) No.999 dated 30.10.1987 was issued by the Government amending the relevant leave rules and enhancing the maximum limit of earned leaves up to 240 days from 180 days and laying down certain other criteria. The orders issued by the Government through the above order dated 30.10.1987 was adopted by the Respondent No.3/ Federation in its 40th Board Meeting held on 11.01.1989 and in the light of the said resolution, the proceedings dated 15.04.1990 came to be issued, clarifying that the orders issued in the above said Government Order can be made applicable for Federation employees with effect from 11.01.1989.

4. This Court having taken note of the above said Government Order and the proceedings dated 15.04.1990, called upon the Respondent No.3 to clarify as to how the benefits of G.O (Ms) No.999 dated 30.10.1987 can be denied to the petitioners.

5. In response to the same, the Respondent No.3 filed a common additional counter-affidavit stating that the benefit of G.O (Ms) No.999, dated



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30.10.1987 were extended only to the Ministerial employees cadre and not to the technical cadre employees, as the employees working in the technical cadre are governed by the Standing Orders under the Factories Act. It is also further contended that the petitioners, who were initially appointed as technical staff are also aware about the applicability of the orders issued in G.O (Ms) No.999 dated 30.10.1987 to the Ministerial Staff alone, and accordingly, submitted a representation in the year 2016, claiming benefits of earned leave and unearned leave on private affairs for all private employees working in Dairy units/ marketing and technical cadre and the Senior Factory Assistant on par with the Ministerial cadre employees and accordingly, the said benefit was extended to the employees by passing a Board Resolution in its 92nd and 93rd meeting held on 23.08.2016 and 28.11.2016 with effect from 29.12.2016. It is also further stated that the petitioner in W.P.No.7132 of 2021, who reached the stage of Ministerial Staff category i.e., the post of 'Deputy Manager (Engineering)' by the date of attaining the age of superannuation was extended the benefit of the said Government Order and whereas, the petitioners in the other three writ petitions have retired from service even before passing of the resolutions dated 23.08.2016 and 28.11.2016 and as such, they are not entitled for the benefit of the orders



issued in G.O (Ms) No.999 dated 30.10.1987.

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6. The relevant paragraphs from the counter-affidavit of the Respondent

No.3 reads as under:-

“ 5. It is further submitted that there are two types of employees are working in the 3rd respondent Federation they are A. Ministerial staff and B. Workers working in Dairy units /Marketing in technical cadre and Senior Factory Assistant. The Ministerial Staff employees are looking after the clerical/Supervisor work in the 3rd respondent Federation and they are governed by the Special by law of the respondent Federation approved by the Functional Registrar of Cooperative Societies i.e. Commissioner of Milk.

6. It is further submitted that workers working in the 3rd respondent's Dairy/Marketing Unit are engaged in the dairy process and they are governed by the Factories Act 1948 and Certified Common Standing Order Certified by the Commissioner of Labour, Chennai as per the Section 5(3) of the Industrial Employment (Standing orders) Act, 1946.

7. It is submitted that the workers working in the Dairy Unit/ Marketing in the Technical cadre/Senior Factory Assistant are governed by the Factories Act, 1948



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and Certified Common Standing Order Certified by the Commissioner of Labour, Chennai, they are enjoying the benefits such as Uniform, washing allowance, night shift allowance, stitching allowance, double wages, over time allowance, Chappals, soap, towel, Rain coat and further it is submitted that based on the Factories Act and certified Standing Orders, the workers working in the Dairy Unit/ Marketing in the Technical cadre/Senior Factory Assistant are eligible for Annual Leave With Wages (Holiday With Wages) at the rate of 1 day for every 20 days of work performed by him during the previous calendar year which can be accumulated up to 30 days.

8. I submit that a portion of employees who were working in the Tamil Nadu Dairy Development Corporation were moved to Tamil Nadu Co-operative Milk Producers' Federation Limited and the benefits of ministerial employees have been settled as per the Service Rules and Bye-Laws of the Tamil Nadu Co-operative Milk Producers' Federation Limited. The Salary and other benefits of the employees are given as per the Modal Standing Order / Special Bye Laws of the Tamil Nadu Co-operative Milk Producers Federation Limited.

9. I submit that the Earned Leave (Privilege leave) and other benefits to the employees who were working in the Tamil Nadu Co- operative Milk Producers Federation



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Limited Units (Manufacturing/Marketing Units) were paid as per their eligibility as per the Modal Standing Order of the Tamil Nadu Co-operative Milk Producers Federation Limited.

10. I submit that Petitioner Thiru.K.Mani (Strike employee) was appointed as Factory Assistant on 10.03.1997 in Ambattur Dairy and periodically promoted as Technician (Operation) and superannuated on 31.05.2014. He claimed all the retirement benefits and other benefits as entitled as per the certified Standing Order and Special Bye-Laws of the Tamil Nadu Co-operative Milk Producers' Federation Limited.

11. I submit that the petitioner herein had been working in the Dairy/Marketing Unit and he is governed by the Factories Act 1948 and certified Standing Orders and Hence, they were only eligible for Annual Leave with Wages (Holiday With Wages) at the rate of one day for every 20 days of work performed by him during the previous calendar year with the accumulation facilities up to 30 days prior to 23.08.2016.”

7. The above statements made in the counter-affidavit are not disputed by the learned counsel for the petitioner.



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8. As the resolution dated 11.01.1989 passed by the Board of the Respondent No.3/ Federation in its 40th Board Meeting is stated to be only in respect of the Ministerial Staff, but not to technical staff, the question of extending the benefits of the proceedings dated 15.04.1990 to the petitioners in these writ petitions does not arise.

9. In the absence of any contradiction to the additional counter-affidavit filed by the Respondent No.3, as extracted herein above, this Court does not find any merit in these Writ Petitions for granting any relief as sought for by the petitioners. In case, if the petitioners were not extended any of the benefits as contended by the respondents in Paragraph No.11 of the additional counter-affidavit, it is open for the petitioner in W.P.No.7132 of 2021 to make such a claim before the Respondent No.3. In case, if any such claim is made by the said petitioner in W.P.No.7132 of 2021 , the Respondent No.3 shall consider the claim and pass appropriate orders in accordance with law.

10. In the light of the above, all the writ petitions are dismissed subject to the observations made herein above. No costs. Connected Miscellaneous petitions, if any shall stand closed.



04.07.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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MUMMINENI SUDHEER KUMAR, J.

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