IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.2572 of 2022
and
CMP No. 20316 of 2022
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1. The District Registrar
   Gobichettipalayam - 638 452
   Erode District

2. The Inspector General of Registration
   No.100, Santhome High Road
   Chennai - 600 028

3. Sub Treasury Officer
   Gobichettipalayam .. Appellants

Versus

Ramani .. Respondent

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 31.03.2022 passed by the learned Judge in WP No. 4161 of 2014.

For Appellants	:	Mr. Yogesh Kannadasan Special Government Pleader
For Respondent	:	Mr. C. Vigneshwaran

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

The appellants have preferred this intra-court appeal as against the order dated 31.03.2022 passed by the learned Judge, allowing the writ petition No. 4161 of 2014 filed by the respondent herein.

2. The aforesaid Writ Petition was filed by the respondent herein to issue a Writ of Certiorarified Mandamus to call for the records relating to the order in Na.Ka.No.3012/A1/2013 dated 31.07.2013 passed by the first appellant herein, quash the same and further direct the appellants 1 and 2 to pay simple interest @ 15% p.a. on the sum to be drawn as Leave Encashment Benefit from the date next falling to the superannuation date (i.e.) on 01.02.2011 to the date of sanction order as compensation to the respondent.

3. In the affidavit filed in support of the writ petition, it was stated by the respondent that he was appointed as Sub Registrar, Grade - II in the year 1986 through the Tamil Nadu Public Service Commission. Thereafter, he was promoted as Sub Registrar Grade - I *vide* proceedings of the second appellant dated 22.03.2000. According to the respondent, while he was

working as Sub Registrar, Tambaram, a complaint was lodged with the Vigilance and Anti-Corruption Department on 16.06.2008 alleging that he demanded a sum of Rs.2,000/- as illegal gratification towards registration of a document. On the basis of such complaint, a trap was laid and the respondent was arrested on 17.06.2008. In view of the arrest and incarceration of the respondent in connection with the criminal case, he was suspended from service on 17.06.2008. Subsequently, after investigation, final report was filed in the criminal case and it was taken on file as S.C.C. No. 4 of 2009 on the file of Chief Judicial Magistrate and Special Judge, Chengalpattu and charges were framed against the respondent for the offence under Sections 7, 13 (1) (d) and 13 (2) of the Prevention of Corruption Act.

4. The respondent further stated in the writ petition that during the pendency of criminal proceedings, he submitted numerous representations to reinstate him in service. Ultimately, by order dated 07.10.2020 of the second appellant, he was reinstated in service and he joined duty on 10.10.2020 as Sub-Registrar Grade-I (Administration). The respondent also stated that on 31.01.2011, he reached the age of superannuation. However, a week before his retirement, an order dated 25.01.2011 was passed by the second appellant once again suspending him from service by citing the pendency of the criminal

proceedings. Subsequently, on 31.01.2011, on the date of his superannuation, an order was passed not allowing him to retire from service and thereby extending his services beyond the date of his superannuation until the termination of the criminal proceedings.

5. According to the respondent, by virtue of explanation (i) to Fundamental Rules 86 (a) (i) (ii) and (iii), he is fully eligible for encashment of earned leave and unearned leave on private affairs to a maximum of (240 + 60) 300 days which is payable to him from 01.02.2011, the next day of his superannuation. It was also submitted that as per Rule 86 of the Fundamental Rules, the encashment of earned leave and leave on private affairs to a government servant is permissible even without a formal sanction order on the date of his or her retirement or on the date of termination of extension of services of the government servants (whose services were extended beyond the period of retirement). By placing reliance on explanation (i) to FR 86 (a) (i) (ii) and (iii), it was stated that even in cases where the service of a government servant is extended beyond the date of retirement, or in the event of voluntary retirement or pre-mature retirement, or in cases where the service of the government servant was terminated by notice or by payment of pay and allowance in lieu of notice or otherwise, encashment of earned leave and

unearned leave on private affairs is to be paid. Thus, the respondent stated that despite the specific statutory provisions, the appellants refused to pay him the amount towards earned leave and unearned leave on private affairs. The representation submitted by him seeking disbursement of the amount towards earned leave and unearned leave on private affairs was rejected on 31.07.2013 by the first appellant and therefore, he has filed the writ petition challenging the said rejection order.

6. By order dated 31.03.2022, the learned Judge, after hearing the counsel for both sides, allowed the writ petition filed by the respondent by referring to the Judgment dated 10.04.2019 passed by a Division Bench of this Court in W.A. No. 1285 of 2019. Aggrieved by the same, the present writ appeal is preferred by the appellants / Department.

7. The learned Special Government Pleader appearing for the appellants would vehemently contend that the learned Judge did not consider the fact that Fundamental Rule 86 (a) (i) (ii) and (iii) has no application to the case of the respondent. According to the learned Special Government Pleader, the respondent was neither permitted to be superannuated nor the order passed against him extending his service has come to an end. Further, the respondent's

service was extended not on the basis of any public interest and the order had been issued extending his service beyond the date of superannuation until the termination of criminal case pending against him. That apart, the Criminal Appeal filed by the respondent is still pending before this Court. Hence, he is not eligible for the benefit of earned leave and unearned leave on private affairs. Reference was also made to Rule 7 (i) of the Tamil Nadu Leave Rules and the explanation made thereto, to contend that only in cases where the service of a Government servant has been extended in the interest of public, beyond his or her date of superannuation, the benefit of earned leave and unearned leave on private affairs can be extended. The learned Judge, without taking note of Rule 7 (i) of the Tamil Nadu Leave Rules or independently appreciating the facts pleaded by the respondent, allowed the writ petition by solely relying on the decision of the Division Bench of this Court in WA No. 1285 of 2019. It is also submitted that the ratio laid down in the said decision, is not applicable to the facts and circumstances of the present case. Therefore, the learned Special Government Pleader prayed this Court to allow this writ appeal by setting aside the order passed by the learned Judge.

8. Per contra, the learned counsel for the respondent submitted that the judgment passed by the Division Bench on 10.04.2019 in W.A. No. 1285

of 2019 squarely applies to the facts of the case and hence, the order of the learned Judge passed in the writ petition, does not require any interference at the hands of this court.

9. Heard both sides and perused the materials available on record.

10. It is evident that the writ petition filed by the respondent was allowed by placing reliance on the Judgment dated 10.04.2019 of the Division Bench of this Court in W.A. No. 1285 of 2019. Therefore, predominantly, it has to be examined as to whether the judgment dated 10.04.2019 is applicable to the facts of this case.

11. On perusal of the Judgment dated 10.04.2019, it is seen that the respondent therein was placed under suspension on 30.05.2006 and he was not permitted to retire on 31.05.2006, on attaining the age of superannuation, so as to facilitate the conduct of disciplinary proceedings initiated against him. On conclusion of the departmental proceedings, the respondent therein was removed from service. As far as the criminal proceedings initiated against the respondent therein in Special C.C. No. 8 of 2011 is concerned, he was acquitted by the trial court on 27.04.2016. It is in those circumstances, the

respondent therein submitted a representation dated 03.02.2014 seeking disbursement of encashment of his earned leave by citing the decision of the Honourable Supreme Court in the case of *State of Jharkhand vs. Jitendra Kumar Srivastava (2013) 12 SCC 210*. However, the representation dated 03.02.2014 of the respondent therein was rejected, against which, he filed Writ Petition bearing No. 26062 of 2016, which was allowed by the learned Judge, by order dated 28.11.2016. Aggrieved by the same, the Department preferred the said Writ Appeal bearing No.1285 of 2019. The Division Bench of this Court, by judgment dated 10.04.2019, dismissed the appeal. The relevant portion of the said Judgment is extracted hereunder:-

> *"9. It is apparent on a reading of Rule 56(1)(c) of the Fundamental Rules that it empowers to continue in service, a Government Servant, who has attained the age of superannuation, till the completion of disciplinary proceedings or criminal prosecution, so that depending on its outcome, a decision regarding imposing any penalty on such delinquent Government Servant could be taken, but there is nothing therein to infer that earned leave of the said Government Servant could be withheld during that period.*
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> *10. Insofar as Note 3 to Rule 7-A of Tamil Nadu Leave Rules, 1933 is concerned, it relates only to ineligibility to receive earned leave during the period of suspension and it has nothing to do with the earned leave which has already been accrued to a Government Servant for the period he has worked.*
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> *11. On the contrary, reference may be made to the fourth proviso to Rule 8(b) of the Tamil Nadu Leave Rules, 1933, which expressly provides for earned leave to be credited to a Government Servant till his dismissal from service. This clearly reflects that there is no legislative intent*

to deny that benefit to a Government Servant even if he is dismissed from service.

12. The Special Government Pleader finally sought to justify the withholding of the earned leave on the basis of the communication issued by the Secretary to Government, Government of Tamil Nadu, Personnel and Administrative Reforms (FR.3) Department in the letter No. 6162/FR/ III/1 dated 17.09.1990, in which clarification has been given on the points raised by the Accountant General regarding the implementation of suo motu authorization of encashment of earned leave at credit at the time of retirement. In particular, the following points and clarifications issued have been relied:

Points raised by the Accountant General	***Clarification issued***
(i) Whether the word 'retirement' mentioned in Tamil Nadu Leave Rules 7 includes compulsory retirement as a measure of punishment, voluntary retirement, dismissal etc., apart from the superannuation retirement and the Government Servants are eligible for the encashment of terminal leave in these cases also.	*There are already instructions for encashment of Earned Leave at the time of compulsory retirement under Fundamental Rules 56(2) and Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, voluntary retirement under Fundamental Rules 56(3) and also for medical invalidation. Necessary amendment to Rule 7 of the Tamil Nadu Leave Rules have been issued in G.O. Ms. No. 345, Personnel and Administrative Reforms (FR. Spl.), dated 31.07.1990 in this regard.*
(ii) Whether the encashment of terminal leave is to be allowed, when the Government servants are	*If a Government servant is suspended shortly before retirement without prejudice to the disciplinary*

Points raised by the Accountant General	*Clarification issued*
placed under suspension shortly before retirement or are permitted to retire without prejudice to the disciplinary proceedings pending against them. It is felt that in such cases, the cash equivalent of leave may have to be withheld for effecting any recovery which may be found to be due while finalising the cases.	*proceedings pending against him, he may be permitted for encashment of earned leave only after finalisation of the disciplinary proceedings and regulation of the suspension period. If a Government servant is not suspended but only disciplinary proceedings are contemplated before retirement, such person may be allowed for encashment of Earned Leave at the time of superannuation without prejudice to the disciplinary action pending against him.*

On a perusal of the same, we are of the considered view that the aforesaid clarifications issued by the Government did not expressly authorize the earned leave of the Petitioner to be withheld and in any event, the same was only in the nature of executive instructions, which do not have any statutory flavour and as such, cannot be "law" for the purpose of Article 300-A of the Constitution. We are fortified in this view by the decision of the Hon'ble Supreme Court of India in State of Jharkhand vs Jitendra Kumar Srivastava [(2013) 12 SCC 210], in which it has been held as follows:-

> *17. It hardly needs to be emphasised that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of the aforesaid Article 300-A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory Rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these Rules, the position would have been different"*

13. As explained in detail, we do not find anything contained in any of the statutory provisions relied by the Learned Special Government Pleader which have the effect of enabling the Government to withhold the encashment of the accumulated earned leave of a Government Servant when he attained the age of superannuation during his continuance in service pursuant to disciplinary proceedings or criminal prosecution pending against him at that point of time. Accordingly, we hold that in the absence of an enabling statutory provisions to that effect, an unfair advantage cannot be taken of a rather fortuitous situation by snatching the frugally accumulated earned leave of a Government Servant in a capricious manner, which remains unencashed at the time of his attaining the age of superannuation.

14. The earlier decisions of this Court in District Collector, Tiruvallur vs T.L. Nageswara Rao (Order dated 13.04.2016 in W.A. No. 458 of 2016) and in Chairman cum Managing Director, TANGEDCO vs P.K. Panchaksharam (Order dated 26.02.2016 in W.A. No. 207 of 2016), which has been confirmed by the Hon'ble Supreme Court of India in the Order dated 06.07.2017 in S.L.P. (C) No. 16229 of 2016, also support the aforesaid view that we have taken.

15. In fine, the order dated 28.11.2016 in W.P. No. 30076 of 2016 passed by the Learned Judge is affirmed and the Writ Appeal is dismissed. The Respondents shall file a report of compliance of the order passed by the Writ Court before the Registrar (Judicial) of this Court by 31.05.2019. Consequently, the connected Miscellaneous Petition is closed. No costs."

12. On going through the above Judgment of the Division Bench of this Court, we are of the view that it is squarely applicable to the facts and circumstances of this case. The submissions raised by the learned Special

Government Pleader appearing for the appellants herein, have already been raised in the above stated writ appeal and they were negatived by the Division Bench of this court. As held by the Division Bench of this Court, mentioned supra, there is no statutory provision which enables the Government to withhold the encashment of the accumulated leave of a Government servant even in case of an order of dismissal passed against him by the Department. Therefore, we refuse to take a different view than the one arrived at by the Division Bench of this Court, in the decision cited supra.

13. In the result, the writ appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J] **[M.S.Q, J]**

25.03.2024

Index : Yes / No
Internet : Yes / No
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