IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2024

CORAM :
THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.A.No.3375 of 2024

The Managing Director
Tamil Nadu Cooperative Milk Producers Federation Ltd.
Aavin Illam, Madhavaram Milk Colony
Chennai – 600 051.
Now having office at
No.3A, Avin Illam
Pasumpon Muthuramalinga Thevar Salai
Nandanam, Chennai – 600 035. .. Appellant

Vs.

1. C.B.Ranganathan

2. The Government of Tamil Nadu
Rep. by its Spl. Commissioner and Secretary to Govt.
Animal Husbandary and Fisheries Department
Fort St. George, Chennai – 600 009. .. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent, against the order passed in W.P.No.32526 of 2016 dated 08.06.2023.

For the Appellant	:	Mr.J.Ravindran Additional Advocate General for Mr.V.Rajinikanth
For the Respondents	:	Mr.Balan Haridas for R1 Mr.S.Yashwanth Additional Government Pleader for R2

JUDGMENT

(Judgment of the Court was made by R.SURESH KUMAR, J.)

This intra-Court appeal has been directed against the order passed in W.P.No.32526 of 2016 dated 08.06.2023.

2.1. The first respondent herein was an erstwhile employee in Diary Development Department as a Diary Supervisor. Thereafter, by virtue of the Government Order in G.O.Ms.No.1921, Agriculture (MP.I) Department dated 08.11.1983, employees like the writ petitioner have been permanently absorbed by the Tamil Nadu Diary Development Corporation Limited, which has subsequently been renamed as Tamil Nadu Corporative Milk Federation Limited.

2.2. As per G.O.Ms.No.1921, Agriculture (MP.I) Department dated 08.11.1983, among the various aspects, how the Earned Leave earned by the employees who have been transferred and absorbed permanently by the Federation need to be calculated and to be paid have been dealt with. The relevant portion of the Government Order reads thus:-

> "*(d) Earned Leave – The employee will be paid by Government cash equivalent of 50 percent of the quantum of earned leave at his credit as on the date of absorption. The balance of credit will be*

> *transferred to the accounts of the individual under the Tamil Nadu Cooperative Milk Producers' Federation with full leave liability thereof being paid to the undertaking by Government to meet the leave salary payable to the employees absorbed in the undertaking."*

2.3. According to the said condition stipulated in G.O.Ms.No.1921, 50% of the Earned Leave would be encashed and that amount would be paid by the Government to every employee. The remaining 50% of the Earned Leave earned by the employees, who got absorbed in the Federation, would be paid by the Federation with full leave liability thereof, being paid to the undertaking by the Government to meet the leave salary payable to the employees absorbed in the undertaking. Therefore, it has become clear that the 50% of the Earned Leave salary may be encashed at the time of absorption itself, where the cash would be paid by the Government. The remaining 50% of the Earned Leave would be deferred for making payment by the Federation, that is the present appellant.

2.4. As far as the first respondent herein is concerned, he earned 103 days Earned Leave during his service at the erstwhile

Department before absorption by the present appellant Federation. Out of the 103 days, the leave salary has been paid by way of cash in respect of 51 days, which admittedly has been received by the first respondent writ petitioner. Therefore, the remaining 52 days, being approximately little more than 50%, since has been transferred and the payment has been deferred at the hands of the present employer / appellant Federation, on superannuation of the writ petitioner first respondent has sought payment, however, the 52 days Earned Leave salary has not been paid. Therefore, the first respondent writ petitioner has approached the Writ Court, seeking a mandamus for encashing the value of 52 days Earned Leave with interest at the rate of 8% per annum.

2.5. The learned Writ Court, having considered the said writ petition, allowed the same by order dated 08.06.2013, where, the learned Single Judge has relied upon the earlier Division Bench judgment of this Court made in the matter of ***Unnikrishnan vs. The Government of Tamil Nadu***[1], where, the very import of Clause 3(d) of the G.O.Ms.No.1921, Agriculture (MP.I) Department dated 08.11.1983 has been considered and it has been held, in unequivocal terms, in the said judgment as to the import of the said

1 *W.A.No.320 of 2011; dated 25.06.2012.*

Clause 3(d) to the following effect:-

"30. Accordingly, the Appellant/petitioner is entitled to be paid his Leave salary, which is payable to him absorbing him in the undertaking/Federation. However, the Learned single Judge, while dismissing the writ petition filed by the Appellant/petitioner, placed reliance on Clause 3(d) of GO 1921 dt.8.11.1983. Though much reliance was placed on behalf of the second respondent/Federation in regard to G.O.Ms. No. 431 Animal Husbandry & Fisheries (MP.I) Department dated 31.12.1992, the proceedings of the Tamil Nadu Co-operative Milk Producers' Federation Limited in reference No. 20320/Accts.1-1/91 dated 4.1.1993 and G.O.Ms. No. 999 Personnel and Administrative Reforms (FR.III) Department dated 30.10.1987, it is to be pointed out that Clause 3(d) of GO 1921 dt. 8.11.1983, which refers to the balance of credit of Earned Leave that was to be transferred to the credit of individual under the Tamil Nadu Cooperative Milk Producers Federation with Leave liability thereof being paid to the undertaking by the Government, was not amended or superseded by any of the subsequent Government Orders like G.O.Ms. No. 999 Personnel and Administrative Reforms (FR.III) Department dated 30.10.1987.

31. That apart, placing reliance on the proceedings of the Tamil Nadu Co-operative Milk Producers Federation Limited dated 4.1.1993 pertaining to the Encashment of Leave, would not in any way enure to the benefit of the second respondent or heighten its case for the simple reason that the said proceedings could not, in our opinion, supresede GO 1921 dt.8.11.1983, which speaks of Earned Leave salary being paid to the Government Servants who were absorbed in the Tamil Nadu Co-operative Milk Producers Federation. To put it succinctly, on going through the spirit and tenor of GO 1921 dt. 8.11.1983, it is very clear that the said GO refers to the Government servants and not to those employees in the Federation. As on date, GO 1921 dt. 8.11.1983 is not superseded, modified, annulled. Therefore, it still holds the field.

32. When Clause 3(d) of GO 1921 dt. 8.11.1983 refers to the full Leave liability of the persons being absorbed in the Federation being paid the Leave salary, then the ingredients of Clause 3(f) of GO 1921 dt. 8.11.1983 would not come to the aid or rescue of the second respondent/Federation, in our considered view. Also, GO 1921 dt. 8.11.1983 did not in any way enjoins adjustment of 50% of the Earned Leave retained by the first respondent out of total

> *accumulation of Earned Leave for the service rendered by the Appellant/petitioner upto 31.1.1981 with the first respondent. Moreover, Clause 3(d) of GO 1921 dt. 8.11.1983 showers benefits on the first respondent inasmuch as it only postponed the payment of 50% of Earned Leave wages on being absorbed in the second respondent/Federation. The service of the Appellant/petitioner with the first respondent was a separate and a distinct one and it was treated like that by the Government as per GO 1921 dt. 8.11.1983 for pension and other benefits. It could not in any way be treated as a composite service by the second respondent/Federation only for the purpose of calculating the Earned Leave wages."*

3.1. Making an attempt, *Mr.J.Ravindran*, learned Additional Advocate General appearing for the appellant, to assail the impugned order would submit that there has been a subsequent Government Order dated 13.10.1987 of the Personnel and Administrative Reforms Department in G.O.Ms.No.999, where, he would invite our attention to paragraph 3(a) of the said Government Order, which reads thus:

> *"3. After careful consideration, Government have decided that the existing provisions in Tamil Nadu Leave Rules, 1933, may be modified as follows:-*

(a) The existing maximum limit of 180 days on accumulation of Earned Leave provided in Rule 8 shall be enhanced to 240 days."

3.2. Relying upon the import of G.O.Ms.No.999, the learned Additional Advocate General would content that the maximum Earned Leave hitherto of 180 days has been enhanced to 240 days, beyond which, no accumulation could be made by any employee. This is a Government Order issued by the Government of State of Tamil Nadu, therefore, it binds on the appellant Federation also.

3.3. When that being so, insofar as the first respondent writ petitioner is concerned, he is entitled for the benefit of encashment of maximum Earned Leave of 240 days, out of which, already 51 days' encashment has been made at the time of absorption. Therefore, the remaining days, that is only for 189 days alone, he is entitled to get accumulation of the Earned Leave. However, if these 52 days are also added, which will be totaled to 241 days, plus the already encashed 51 days, all together, goes to 343 days. Therefore, the same would go against the import of G.O.Ms.No.999, hence, the employee is not entitled to claim the benefit of Earned Leave encashment for the additional 52 days, as has been claimed by the writ petitioner. Hence, the direction issued, by way of a mandamus, by the Writ Court through the impugned order is erroneous. Therefore, the learned Additional Advocate General seeks indulgence of this Court.

4.1. We have heard *Mr.Balan Haridas,* learned counsel appearing for the first respondent writ petitioner, who would submit that as per the import of Clause 3(d) of the G.O.Ms.No.1921, the employee would be entitled to encash 50% of the Earned Leave already earned in the erstwhile Department and the remaining 50% has been transferred to the present employer / Federation. Therefore, what has been transferred to the present employer / Federation, in fact, has to be excluded from the maximum benefit of 240 days' Earned Leave accumulation of the employee in the present appellant Federation.

4.2. However, the first respondent writ petitioner has not asked for 343 days totally, as accumulated by the appellant Federation, but, seeks only encashment of 52 days' Earned Leave, which has already been accumulated and transferred at the time of absorption, which is included in the maximum 240 days as has been fixed by the Federation in consonance with G.O.Ms.No.999 dated

13.10.1987.

4.3. The learned counsel would also rely upon paragraphs 30 to 32 of the Division Bench judgment cited *supra*, where, the service condition of these employees, who have worked already in the Department before absorption in the present appellant Federation, has been dealt with and it has been held that it is a separate service. Therefore, only for the purpose of encashment of Earned Leave, it cannot be treated as combined service. When that being the position of law, as has been held by the Division Bench, which has given a complete answer to the issue that has been raised by the appellant in this intra-Court appeal, the order passed by the Writ Court does not warrant any interference, he contended.

5. We have given our anxious consideration to the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

6.1. The relevant Clause, that is Clause 3(d) of G.O.Ms.No.1921, Agriculture (MP.I) Department dated 08.11.1983, makes it very clear under the heading "Earned Leave" that the employees will be paid by the Government cash equivalent to 50%

of the quantum of Earned Leave at his credit at the date of absorption. The balance of credit will be transferred to the accounts of the individual under the Tamil Nadu Cooperative Milk Producers' Federation with full leave liability thereof being paid to the undertaking by the Government. It means, the undertaking, that is the Federation, would be paid by the Government at a later point of time for the remaining payment of encashment of Earned Leave, which is now been transferred and deferred to the present employer with whom the employees have got absorbed.

6.2. Whether the Federation has received the amount from the Government or not is between the appellant Federation and the Government, for which, the employee cannot be blamed and also the employee cannot be denied the benefit, which has already been accrued by virtue of Clause 3(d) of G.O.Ms.No.1921, under which only the services of the employees have been absorbed by the appellant Federation.

7.1. The arguments advanced by the learned Additional Advocate General stating that if the maximum Earned Leave encashment accumulation goes beyond 240 days, the same would go against G.O.Ms.No.999 dated 13.10.1987 of the Personnel and

Administrative Reforms Department, the answer to the said argument made by the learned Additional Advocate General appearing for the appellant is at paragraph 30 and 31 of the Division Bench judgment cited *supra*, where, among the other things, the Division Bench, in unequivocal terms, held that the services of the appellant petitioner (in that case) with the first respondent was separate and a distinct one and it was treated like that by the Government as per G.O.Ms.No.1921 dated 08.11.1983 for pension and other benefits. It cannot, in any way, be treated as a composite service by the second respondent / Federation, only for the purpose of calculating the Earned Leave wages.

7.2. Therefore, it is not a continuous service or a single service of the employee who got absorbed by the appellant Federation and it has to be treated as a separate service, that means, for all other purposes, it can be treated as a separate service or a distinct service from the date of absorption and therefore, only for the purpose of encashment of the Earned Leave, which has already been accumulated in the account of the employee, when he or she was working in the erstwhile employer, the services cannot be treated as a combined service or single service.

7.3. Therefore, the Clause 3(a) of the G.O.Ms.No.999, as heavily relied upon by the learned Additional Advocate General, would noway have any interplay or overplay over the accrued leave on an employee, who had been absorbed in the appellant Federation. This position has been made clear in the said Division Bench Judgment, cited *supra*, which in fact has been relied upon by the learned Single Judge in allowing the writ petition through the impugned order.

8. In that view of the matter, we do not see any reason to interfere with the impugned order. Resultantly, the appeal fails, hence, is liable to be dismissed. Accordingly, the present writ appeal stands dismissed. The directions issued by the learned Single Judge through the impugned order shall be complied by the appellant within a period of thirty days from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, C.M.P.No.26169 of 2024 is closed.

(R.S.K., J.) (C.S.N, J)
04.12.2024

Neutral Citation:Yes/No
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To:

1. The Spl. Commissioner and Secretary to Govt.
   The Government of Tamil Nadu
   Animal Husbandary and Fisheries Department
   Fort St. George, Chennai – 600 009.

R. SURESH KUMAR, J.
AND
C. SARAVANAN, J.

(drm)

W.A.No.3375 of 2024

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