



W.P.(MD)No.6415 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.6415 of 2021
&
W.M.P(MD)Nos.5018 and 15161 of 2021

P.Muthukannan

... Petitioner

Vs.

1.The Assistant Director
Office of District Land & Survey
Madurai

2.The Zonal Deputy Director
Land Survey Registration, Madurai

3.The Additional Director
Land Survey Registration, Chennai

4.The Special Commissioner and Director
Land Survey and Tax Collection Scheme
Tax Scheme, Chennai-5

5.The Tahsildar
Peraiyur Taluk Office
Peraiyur
Madurai District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records in connection with the impugned order dated 17.02.2021 passed by the 1st respondent and consequently quash the same.

For Petitioner : Mr.N.Pandivelrajan

For Respondents : Mr.D.Sasikumar, AGP

ORDER

The petitioner herein while working as Firka Surveyor, Sindupatty Firka, Usilampatti Taluk, Madurai District, was arrested by the Vigilance and Anticorruption Department on 01.03.2002 in Crime number 5/2002 for offence under section 7 and 13(2) r/w 13(1)(d) of P.C.Act, 1988. The petitioner was convicted and the said conviction has become final . The claim of the petitioner in this petition is with regard to Payment of leave encashment in respect of the leave accrued to him while he was in service. It is the settled law that the earned leave accrued to the credit of the petitioner while he was in service is a property within the meaning of Article 300-A of the Constitution of India. In the absence of any statutory rule, the petitioner cannot be denied of the property right acquired by him while he was in



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service. The said issue is also well settled and a learned Division Bench of the Madras High Court in W.A.No.1285 of 2019 also confirmed the said view, wherein it was held as under:

“ 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.



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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.”

3. The respondents filed counter affidavit contending that the matter is pending before the Hon'ble Supreme Court as against the conviction that was imposed on the petitioner and therefore the petitioner cannot be paid encashment of earned leave at this stage. The learned Additional Government Pleader also further contended that the relevant Fundamental Rules and Tamil Nadu, Leave Rules, 1933 were appropriately amended forfeiting the entire amount that is available to the credit of the employee towards earned leave etc., by issuing G.O.MS.N0.100, Human Resources Management (FR.II) Department dated 07.09.2022 where in it disentitles the government servants who are dismissed or removed or resigned from Service from receiving the eligible encashment of earned leave and leave on private affairs. The relevant proviso reads as under:

*“ Provided that the Government servants who
are dismissed or removed from service or who have*



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resigned from service shall not be eligible for encashment of earned leave and leave on private affairs.

Provided further that the encashment of earned leave and leave on private affairs shall be deferred to the Government servant who are not permitted to retire from service on attaining the age of superannuation but retained in service under Fundamental Rule 56(1)(c), till the enquiry into the charge of misconduct or criminal misconduct is/are concluded and final order passed thereon by the competent authority. The said benefit of encashment of earned leave and leave on private affairs shall be drawn and disbursed to such Government servants after regulating their suspension period.”

4. From the perusal of the said G.O.Ms.No.100 dated 07.09.2022, it is clear that the same was prospectively brought into effect but not with retrospective effect. As already noted above, the petitioner herein was dismissed from service as early as on 01.09.2007 and as on that day, the amendment to Fundamental Rules and Rules issued through G.O.MS.No.100 dated 07.09.2022 was not in existence. Therefore, the ratio laid down by the



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learned Division Bench as noted above is applicable to the case of the petitioner herein and he is entitled to be paid the entire amount due to him towards encashment of earned leave as on the date of dismissal of the petitioner from Service, irrespective of the pendency of the matter before Hon'ble Apex Court.

5. In these circumstances, the petitioner is entitled for the relief as sought for in the writ petition. Accordingly, the writ petition is allowed setting aside the impugned order and further directing the respondents to pay the entire amount due to the petitioner towards encashment of earned leave available to his credit as on 01.09.2007 as expeditiously as possible at any rate within a period of two months from the date of receipt of a copy of this order together with interest at 6% per annum. No costs. Consequently, connected miscellaneous petitions are closed.

11.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes
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