BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 16/04/2024

CORAM

Justice N.SESHASAYEE
and
Justice P.VADAMALAI

WA(MD). Nos.561 to 564 of 2018 and
CMP(MD) Nos.3165 to 3168 of 2018

The Managing Director
State Express Transport Corporation Ltd
Thiruvalluvar Illam
Pallavan Salai
Chennai 600 002. ... Appellant

Vs

M.Jesindal Mary ... Respondent in WA No.561/2018
M.Selvaraj ... Respondent in WA No.562/2018
T.Mohandas ... Respondent in WA No.563/2018
S.Subbiah ... Respondent in WA No.564/2018

COMMON PRAYER: Writ Appeals are filed under Clause 15 of the Letters Patent against the common order dated 28.04.2017 in WP(MD) Nos.8540, 8569, 8571 and 8575 of 2017.

For Appellant : M/s.A.Jeyaram
For Respondents : Mr.A.Rahul for all respondents

COMMON JUDGMENT

(Judgment of the Court was delivered by N.SESHASAYEE, J.)

The short question involved in these cases is whether the respondents herein are entitled to encash the annual leave on private affairs for a period of 90 days based on G.O.Ms.No.488 Finance (Pension) Department dated 12.08.1996 as well as in terms of the letter of the Government dated 28.01.2008.

2. The learned Single Judge vide his order dated 28.04.2017 had allowed the said contention based on an order in a batch of cases arising in WP No.2323/2016. This order of the learned Single Judge is now under challenge.

3. The learned counsel for the appellant placed reliance on the order of another Division Bench of this Court in a batch of writ appeal in WA(MD) Nos.939/2017 etc. dated 27.03.2018, wherein, the said Bench had drawn a distinction between the Government servants for whom the benefits of G.O.Ms.No.488 was extended and the employees of the public sector corporations, and also on a clarificatory letter of the

Finance Department dated 15.02.2012. He argued that this judgment by a coordinate Bench settled the issue.

4. Per contra, the learned counsel for the respondents would submit that as per the Common Service Rules for the employees of the Transport Corporation, it is indicated that for those working in the managerial cadre, the rules for earned leave and medical leave shall be regulated in accordance with the Leave Rules applicable to Government servants.

5. Submissions of both sides are carefully weighed. The point which the appellant canvasses before this Court is adequately captured in the order of this Court dated 27.03.2018 in WA(MD) Nos.939 of 2017 batch of cases, which reads thus:

> *"3.Their arguments was based upon G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996 and the Government Letter, dated 28.01.2008 and a Resolution was passed by the appellants/Transport Corporation in its meeting convened on 15.02.2012, wherein, the Board recommended for implementation of the Government Order/letter regarding encashment of unearned leave on private affairs at the time of retirement.*

4.The appellants/Transport Corporation resisted the said prayer by contending that the Transport Corporation has a separate set of Leave Rules and G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996 cannot be extended to the Government of Tamil Nadu undertaking, such as the appellants/Transport Corporation. Further, it was contended that though there was a Clarificatory Letter, dated 28.01.2008 extended the benefit of G.O.Ms.No.488 to the State Public Sector undertaking, subsequently, the Government have clarified by letter, dated 15.02.2012 that "only those Statutory Boards/State Public Sector Undertakings whose service Regulations/Service Rules provide for extension of this scheme may continue to sanction the benefit of encashment of Unearned Leave on Private Affairs to their employees at the time of their retirement from the date of the orders issued in Government letter, dated 28.01.2008 without seeking financial assistance from the Government".

5.Therefore, the appellants/Transport Corporation contended that the respondents/writ petitioners are attempting to achieve the relief indirectly what they cannot directly achieve. Though the said contention was raised in W.P(MD)No.7423 of 2014, the same came to be allowed. The matter was taken on appeal and the Division Bench of this Court in W.A(MD)No.1352 of 2015, (the Government of Tamil Nadu Vs. P.Gurusami), dismissed the writ appeal, *which concerned the claim made by the Managerial/Supervisory staffs of Tamil Nadu Tea Plantation Corporation Limited by referring paragraph No.17 of the Judgment and this Court allowed the Writ Petitions as prayed for.*

6.We have heard the learned counsels appearing for the parties and perused the materials placed on record.

7. It is an admitted fact that G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996 issued by the State Government did not extend the benefit of encashment of unearned leave on private affairs at the time of retirement to the State Government undertakings or statutory bodies etc and such benefit was extended to the Government servants and the maximum period was stipulated as 90 days. Thus, by virtue of G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996, the respondents/writ petitioners cannot make a claim for the encashment of the unearned leave on private affairs.

8.The problem arose on account of a letter, dated 28.01.2008. Admittedly, the Government order cannot superseded by a Government letter, which has been issued by the Secretary of the Government. At the best, it is advisory and not mandatory in which, a clarification was issued that the scheme of encashment of unearned leave on private *affairs ordered in G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996 may also be extended of employees of statutory bodies and the State Government undertakings. It appears that a thorough exercise was not undertaken by the Finance Department before issuing the Clarificatory Letter, dated 28.01.2008. Subsequently, it appears that the matter was brought to the knowledge of the Finance Department, the Secretary to the Government of Tamil Nadu and appropriate clarification was issued by the Government on 15.02.2012, whereby, making it clear that if a State Public sector undertaking has such a provision in their Regulations and Service Rules, they may continue to do so. In the said Government letter, in paragraph No.3, the Government specifically took note of the fact that few State Public Sector Undertakings have extended the benefit of encashment of Unearned Leave on Private Affairs to their employees, even though there was no provision in their services rules for extension of such benefit and seek later orders for ratification from the Government. That apart, in paragraph No.4(ii), the Government had specifically clarified that the scheme should not be extended to the employees of State Public Sector Undertakings, whose Service Rules did not contain the provision for encashment of unearned Leave on private affairs.*

9. Thus the mistake committed by the Government in issuing a letter, dated 28.01.2008, stood and appropriately clarified *by the Finance Department. In the interregnum ie., in the year 2010, the Board of the appellants/Transport Corporation placed the Government Order, dated 28.01.2008 for consideration and the decision taken in the meeting held on 15.06.2010 states "recorded for implementation". The fact remains that though such resolution was passed, the same remained un-implemented and well before that could take place, the Government had clarified that such scheme will not apply to State Public Sector Undertakings whether there is no Service Rule or Regulation to that effect. Therefore, reliance placed on resolution by the learned counsel for the respondents/writ petitioners is self-serving, it is more so, because the respondents/writ petitioners, who have came forward before this Court claiming the benefits are all persons in the Managerial/Supervisory cadre".*

6. Turning to the contention of the respondents, the relevant rule pertaining to the earned leave and medical leave applicable to managerial cadre employees of the transport corporation are concerned, it reads as follows:

"(ii) Managerial Cadre Persons:
Rules for earned leave and medical leave shall be regulated in accordance with the leave rules applicable to Government servants."

7. What is significant and easily noticeable is that the said Rule as extracted above does not deal with unearned leave. Now, but for G.O.Ms.No.488, even a Government servant would not be entitled to encash his unutilised unearned leave for private affairs, whereas right through a Government servant is entitled to encash his earned leave upto 240 days in his entire service that stands to his credit at the time of his superannuation. This distinction cannot be wiped away nor camouflaged. Inasmuch as the combined service rules of transport employees does not include unearned leave specifically, this Court may not be able to telescope the same into the said Rules. This necessarily implies that the submissions made on behalf of the respondents may not be tenable.

8. This leaves the contention of the appellant for evaluating its sustainability on merit, and on this point, the other Division Bench has already given its opinion in WA(MD) Nos.939 of 2017, and this Court does not find any need to differ from the said view.

9. In view of the same, the writ appeals are allowed. No costs. Consequently connected Miscellaneous Petitions are closed.

(N.S.S.,J.) (P.V.M.,J.)
16.04.2024

NCC :Yes/No
Index :Yes/No
RR

N.SESHASAYEE, J.
and
P.VADAMALAI, J.

RR

WA.(MD)Nos.561 to 564 of 2018

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