



W.P.(MD) No.19050 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.19050 of 2020

K.Jeyaseelan

... Petitioner

Vs.

The Superintending Engineer,
TANDEDCO,
Thanjavur Electricity Distribution Circle,
No.1, Vallam Road,
Thanjavur District.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order made in க.எண்.009632/391/நி.பி.(2)/கோ.ஒய்வு/2020 dated 04.11.2020 passed by the respondent and quash the same and consequently direct the respondent to disburse the Earned Leave Salary and Gratuity, to the petitioner with all consequential benefits with interest.

For Petitioner : Mr.S.Anwar Sameem

For Respondent : No appearance



W.P.(MD) No.19050 of 2020

WEB COPY

ORDER

The petitioner herein, while he was working as Commercial Inspector in the respondent-Corporation, was involved in a criminal case in Crime No.9/2002 registered under the Prevention of Corruption Act and he was charge sheeted in Special Case No.43/2012 on the file of the Special Court for Prevention of Corruption Act, Tiruchirappalli. The petitioner was acquitted in the said crime and in the appeal filed there against by the Department, he was convicted by order dated 22.01.2019 in C.A.(MD) No. 115 of 2012 by imposing a sentence of three years Rigorous Imprisonment and fine of Rs.5,000/-. Aggrieved by the same, the petitioner approached the Hon'ble Apex Court by filing C.A.No.223 of 2020, wherein the Hon'ble Apex Court modified the sentence to that of one year Rigorous Imprisonment, instead of three years, by a judgment dated 04.02.2020. Consequent upon the said conviction, which had become final, the respondent-Corporation had issued a show cause notice dated 22.03.2019 and the petitioner was dismissed from service by order dated 11.04.2019. Thereafter, the petitioner was paid Special Provident Fund, General Provident Fund and Family Benefit Fund. But the petitioner was not paid the earned leave salary, gratuity and pension



W.P.(MD) No.19050 of 2020

and the respondent-Corporation rejected the claim of the petitioner for the said amounts by issuing the impugned proceedings in க.எண். 009632/391/நி.பி.(2)/கோ.ஒய்வு/2020, dated 04.11.2020. aggrieved by the said proceedings, the petitioner approached this Court by filing the present writ petition.

2. Learned counsel for the petitioner, at the outset, fairly submitted that the petitioner is not claiming for gratuity and pension, in view of the settled legal position. However, he made his submissions insofar as the amounts payable to him in respect of earned leave salary is concerned.

3. It is the contention of the learned counsel for the petitioner that earned leave salary is the amount earned by him while the petitioner was in service, which would fall within the meaning of “right to property” and “right to property” is guaranteed under Article 300A of the Constitution of India and therefore, in spite of dismissal or removal from service of an employee, the property in the shape of salary, earned by the petitioner while he was in service, cannot be denied.



W.P.(MD) No.19050 of 2020

WEB COPY

4. In support of his contention, learned counsel for the petitioner placed reliance on various decisions of this Court in W.A.No.4018 of 2019, dated 22.11.2019; W.A.No.3401 of 2023, dated 11.12.2023; W.A.(MD) No. 903 of 2019, dated 06.09.2019; and ***Secretary to Government, Revenue Department vs. K.Palaniyandi*** reported in ***2019 (5) CTC 19*** and contended that earned leave salary cannot be forfeited or denied, even in case of dismissal of an employee from service or whatever be the problem.

5. No representation for the respondent-Corporation. As there was no representation for the respondent in the forenoon session, this Court passed over the matter to afford an opportunity to the respondent. In spite of the same, no representation for the respondent in the post-lunch session also.

6. In the counter affidavit filed by the respondent, it is stated that in terms of Rule 21 of the Tamil Nadu Pension Rules, 1978, dismissal or removal of a Government servant from a service or post entails forfeiture of his past service and therefore, the petitioner is not entitled for encashment of the earned leave salary.



W.P.(MD) No.19050 of 2020

WEB COPY

7. This Court has thoroughly gone through the orders passed by the learned Division Benches of this Court referred to above. In W.A.No.4018 of 2019, a Division Bench of this Court, after having discussed the matter elaborately and also having considered the decision of the Hon'ble Apex Court, held as under:

“16. Employees Contribution to Provident Fund and leave which has been earned by him (not encashed) are the property of the employee, they cannot be taken away, without due process of law, as enshrined, under Article 300 A of the Constitution of India. There is nothing in the Rules which has been relied by the learned Government Pleader which will enable the Government to withhold the Employee's own contribution to Provident Fund and encashment of accumulated earned leave when the Government servant has attained the age of superannuation. These amounts have to be given to the Government servant, even if the criminal proceedings culminate against the Government servant and the Government servant is terminated from service. If these amounts cannot be forfeited even on termination, there is no justification in withholding the same during the continuation of criminal proceedings after the Government servant has attained the age of superannuation.”



WEB COPY

8. Similarly, in the case of ***K.Palaniyandi*** (*cited supra*), another Division Bench of this Court held as under:

“14.In other words, it is to be noted that even a person who is dismissed from service, is also entitled to the encashment of Leave Salary. If that being case, we do not find any logic behind the contention of the Appellant as if such amount can be paid only after the termination of the proceedings. In other words, there must be a specific reason with object for retention of the said sum, pending disciplinary proceedings. What the Government Servant is entitled to even at the worst scenario of dismissal of his service, cannot be denied to be paid on his request, merely because, his service is retained.

17.Next contention of the Appellants is in respect of Rule 7 of the Tamil Nadu Leave Rules, 1933. A careful perusal of the Rule 7 of the said Rules would again show that even the Government Servant, who is terminated from service or compulsorily retired from service as a measure of punishment, is also entitled for encashment of Earned Leave and leave on private affairs. Therefore, the entitlement of such Government Servant to encash such Earned Leave and leave on private affairs is not altered even assuming that he is punished by way of termination of



W.P.(MD) No.19050 of 2020

his service. Therefore, we find that the contention raised by the appellants on this ground is also liable to be rejected.”

9. Following the decision in ***K.Palaniyandi*** (*cited supra*), another Division Bench in W.A.No.3401 of 2023 also confirmed the order of the learned Single Judge and upheld the claim of the delinquent employees therein. So also, in W.A.(MD) No.626 of 2019 and W.A.(MD) No.903 of 2019. By judgment dated 26.02.2020 and 06.09.2019, the learned Division Benches have upheld the similar claim for payment of earned leave salary of the employees, who were dismissed from service. The said decisions of the learned Division Benches were followed by different learned Single Judges in a series of judgments.

10. No doubt, in terms of Rule 21 of the Tamil Nadu Pension Rules, 1978, the past service would be forfeited in case of dismissal or removal from service. But, the earned leave that is already in the credit of an employee, which is in the shape of leave salary to the credit of the petitioner cannot be denied, by placing reliance on Rule 21 of the Tamil Nadu Pension Rules, as



W.P.(MD) No.19050 of 2020

such leave salary earned by the petitioner is declared to be the “property” within the meaning of Article 300A of the Constitution of India.

11. In the light of the above, it is settled legal position that even in case of dismissal or removal of an employee from service, the leave salary which was earned by the employee cannot be denied and he is entitled to draw such amounts.

12. Accordingly, for the above reasons, the impugned order is set aside and the Writ Petition is allowed directing the respondent to pay the entire amounts due and payable to the petitioner towards the earned leave salary available to his credit as on the date of dismissal from service as expeditiously as possible, at any rate, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

26.02.2024

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



WEB COPY



W.P.(MD) No.19050 of 2020

To

The Superintending Engineer,
TANDEDCO,
Thanjavur Electricity Distribution Circle,
No.1, Vallam Road,
Thanjavur District.



WEB COPY



W.P.(MD) No.19050 of 2020

MUMMINENI SUDHEER KUMAR, J.

ABR

W.P.(MD) No.19050 of 2020

26.02.2024