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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.21153 of 2024

and

W.M.P(MD)No.17912 of 2024

P.Arunachalam

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Department of Animal Husbandry, Dairying, Fisheries,
Secretariat, Chennai.

2.The Commissioner,
The Department of Milk Production and Dairy Development,
Chennai – 51.

3.The General manager,
Tiruchirapalli District Co-operative Milk
Producers Union Limited,
Pudukottai Road,
Kottapattu, Tiruchirapalli.

4.The Deputy General Manager,
Tiruchirapalli District Co-operative Milk
Producers Union Limited,
Pudukottai Road,
Kottapattu, Tiruchirapalli.

... Respondents



PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd Respondent vide his proceedings in Na.Ka.No.8098/P and E/2022 dated 29.07.2022 and quash the same as illegal in so far as it relates to withholding of monetary benefits of encashment of earned leave is concerned and consequently to direct the 3rd Respondent to disburse the benefits of the petitioners as regards the encashment of earned leave with an accrued interest there for in conformity with the proceedings of the 3rd respondent in Na.Ka.No.8098/P and E/2022 dated 29.07.2022 allowing the petitioner to retire from service, within the time frame that may be stipulated by this Court.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader
for R1 & R2
Mr.Devasenar
Standing Counsel for R3 & R4

ORDER

The instant writ petition has been filed by a Manager(Milk Production Manapparai team), who was permitted to retire on 29.07.2022, challenging the order dated 29.07.2022, wherein the respondents Milk Producers Union has withheld the encashment of the accumulated earned leave.



2. According to the learned Counsel appearing for the writ petitioner, he was issued with a charge memo on 28.07.2022. The enquiry has been completed, so far the final orders have not been passed by the third respondent in the writ petition.

3. On 29.07.2022, under the impugned order, though the petitioner was permitted to retire from service, yet the authorities have withheld the earned leave surrender salary alone. This portion of the impugned order is under challenge in the present writ petition.

4. The learned Counsel appearing for the writ petition has relied upon the judgment of the Hon'ble Division Bench of our High Court reported in **2019 SCC online Mad 1195 (State of Tamil Nadu, Rep. by the Secretary to Government Vs. V. Mahalingam)**, wherein the Hon'ble Division Bench was pleased to hold that there are no statutory provisions which enable the Government to withhold the encashment of accumulated earned leave of a Government servant when he had attained the age of superannuation during his continuance in service pursuant to the disciplinary proceedings or criminal prosecution pending against him at that point of time. Hence, he prayed for quashing the part of the order which withholds the encashment of surrender leave.



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5.Per contra, the learned Counsel appearing for the respondents herein had contended that since the enquiry is yet to be completed, the petitioner has to await for the final order to be passed by the third respondent herein. Therefore, the petitioner cannot now seek to get back his surrender leave at this point of time.

6.I have carefully considered the submission made on either side and perused the materials available on record.

7.The perusal of the impugned order dated 29.07.2022, reveals that the petitioner has been permitted to retire from service w.e.f. 31.07.2022. However, since the departmental proceedings are pending against him, one of the terminal benefits namely earned leave surrender salary is withheld.

8.In view of the Judgment of the Hon'ble Division Bench of our High Court as cited supra, the respondent authorities do not have power to retain the said surrender leave. Therefore, the portion of the order, which is adverse to the writ petitioner is hereby set aside and the respondent authorities are directed to disburse the earned leave surrender salary of the writ petitioner within a period of twelve weeks from the date of receipt of a copy of this order.



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9. With the above said observations, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

19.09.2024

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

To

1. The Principal Secretary to Government,
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Secretariat, Chennai.

2. The Commissioner,
The Department of Milk Production and Dairy Development,
Chennai – 51.

3. The General manager,
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R.VIJAYAKUMAR, J.

RJR

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