



W.P.(MD).No.21987 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.21987 of 2021

T.Varghese

...Petitioner

Vs.

The District Collector,
Tirunelveli District,
Tirunelveli.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in connection with the impugned order of rejection passed by him vide his proceedings in O.Mu.A6/223/2020 dated 23.01.2020 and quash the same as illegal and arbitrary and consequently direct him to disburse the encashment of the Earned Leave, Un-earned Leave on private affairs and granting to the petitioner in the light of the order passed by this Court in a similar case in W.P.(MD)No.7761 of 2018 dated 10.04.2018 and confirmed by the Hon'ble Division Bench in W.A.(MD)No.105 of 2019 dated 31.07.2019 within the time limit that may be stipulated by this Court.



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For Petitioner : Mr.G.Thalaimutharasu
For Respondent : Mr.D.Gandhi Raj,
Special Government Pleader

ORDER

The present writ petition has been filed to quash the impugned order of rejection passed by the respondent vide his proceedings dated 23.01.2020 and consequently directing the respondent to disburse the encashment of the Earned Leave, Un-earned Leave on private affairs and granting to the petitioner in the light of the order passed by this Court in a similar case in W.P.(MD)No.7761 of 2018 dated 10.04.2018 and confirmed by the Hon'ble Division Bench in W.A.(MD)No.105 of 2019 dated 31.07.2019.

2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

The petitioner was appointed as Typist in the Revenue Department on 10.02.1997 through TNPSC. Thereafter, he was promoted as Assistant on 31.03.2001, Deputy Tashildar on 31.03.2012 and lastly as Tashildar on 01.12.2017. While he was working as Tahsildar in Nanguneri Taluk,



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Tirunelveli District, he was encountered with a trap by the Deputy Superintendent of Police, Vigilance and Anti Corruption Department, Tirunelveli. Consequently, a criminal case was also registered against him in Cr.No.7 of 2018, U/s.7(1) of the Prevention of Corruption (Amendment) Act, 2018. The same culminated in a criminal proceeding and the same is pending. In the meanwhile, the petitioner was placed under suspension, vide proceedings dated 07.12.2018. Though he attained his age of superannuation on 31.05.2019, his service was extended as per Rule 56(1) of the fundamental Rules by the respondent, vide proceedings dated 31.05.2019. Both the disciplinary proceedings as well as the criminal proceedings are pending as against the petitioner as on date. In the meanwhile, the petitioner made a representations dated 05.03.2021 and 27.07.2019 requesting to disburse the encashment of earned leave, unearned leave on private affairs and gratuity. However, the respondent rejected the petitioner's claim, vide proceedings dated 23.01.2020. Challenging the same, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner submitted that even the pendency of disciplinary proceedings or criminal proceedings as against the



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delinquent, will not disentitle himself for encashment of earned leave, unearned leave and gratuity. In view of the same, he pressed for allowing the writ petition.

4. The respondent has filed a counter and the learned Additional Government Pleader submitted that the crime which has been registered as against the petitioner by the Vigilance and Anti Corruption has been culminated, in a criminal proceeding by laying charge sheet on 18.07.2019 as against the petitioner in Special case No.3 of 2019 on the file of Special Court under Prevention of Corruption Act, Tirunelveli. That apart, the final order in the disciplinary proceeding initiated as against the petitioner by the department is also yet to be passed. Relying upon the Tamil Nadu Pension Rules, he further submitted that the Government reserves right to withhold the pension of delinquent in case of pendency of disciplinary or criminal proceeding as against him. In view of the same, he pressed for dismissal of the writ petition.

5. Heard, the learned Counsels on either sides. Carefully perused the materials available on record.



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6. The petitioner despite attaining the age of superannuation on 31.05.2019, is not allowed to retire. On his request for disbursal of encashment of earned leave, unearned leave on private affairs and gratuity, the respondent has passed the impugned order citing pendency of criminal case before the Special Court and the disciplinary proceeding as against him and relying upon Rule 56 1(C) and Rule 60 of the Tamil Nadu Pension Rules, the respondent has passed the impugned order, holding that the petitioner is entitled only for provisional pension. Hence, the petitioner requested the respondent to disburse the gratuity, earned leave and unearned leave.

7. However, the crux of the case is no more res-integra and the Hon'ble Division Bench of this Court in W.A.(MD)No.105 of 2019 has dealt with a similar issue by its judgment dated 31.07.2019 and has passed an order in favour of the petitioner thereat. For better appreciation, the relevant portion of the same is extracted as follows:

“21.The another Division Bench of this Court in W.A.No.207 of 2016 dated 26.02.2016, has considered the very same issue and observed as follows:-



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“The instant intra-court appeal arises from the order dated 2nd June, 2015 made in W.P.No.15457 of 2015.

2. The writ petitioner, who is the respondent herein, filed the writ petition, seeking direction to the appellants herein to disburse his retirement benefits, such as gratuity, special provident fund, encashment of earned leave and unearned leave on private affairs.

3. The respondent herein working as Electrician in the Electricity Board was to retire on attaining the age of superannuation on 30th June, 2013. However, he was not permitted to do so on account of pendency of the criminal case under the provisions of the Prevention of Corruption Act, 1988.

4. The learned Single Judge, considering all aspects of the matter, held that the petitioner was having earned leave and unearned leave on private affairs before initiation of the case and as such, he is entitled to encashment of earned leave and unearned leave on private affairs. The claim of gratuity was given up by the employee / writ petitioner on the ground that in the event of conviction and dismissal of service, the writ petitioner may not be entitled to get gratuity. The special provident fund was also not granted as the writ petitioner failed to establish any contribution made by him. While disposing of the writ petition, a direction was made to the appellants herein to disburse encashment of earned leave and



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encashment of unearned leave on private affairs. In respect of special provident fund, it was held that if any contribution was made by the writ petitioner, the same can be paid to the petitioner.

5. We do not find any error, illegality or infirmity in the order sought to be impugned in this writ appeal preferred by the Tamil Nadu Generation and Electricity Distribution Corporation Ltd., warranting interference. Thus, the writ appeal stands dismissed. No costs. Consequently connected miscellaneous petition stands closed.”

24. Therefore, we find the present issue is also certainly similar to the one in the above cases and thus, we find that the order of the Writ Court in granting the relief to the writ petitioner need not be interfered with.”

8. Fully fortified by the judgment of the Hon'ble Division Bench discussed supra, observing that the earned leave and unearned leave are not a bounty and the employees are duly entitled to receive the same, even if they are not allowed to retire citing pendency of disciplinary proceeding or criminal proceeding as against them.



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9. In view of the same, this Court hereby quash the impugned order dated 23.01.2020. Consequently, the respondent is directed to disburse the encashment of earned leave and unearned leave to the petitioner which the petitioner is entitled to within a period of eight (8) weeks from the date of receipt of a copy of this order.

10. Accordingly, this Writ Petition is partly allowed. No costs.

12.04.2024

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

To

The District Collector,
Tirunelveli District,
Tirunelveli.



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L.VICTORIA GOWRI, J.

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