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Rev.Aplw.No.177 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2025

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Review Application No.177 of 2025

in

W.P.No.26927 of 2024

1.The State of Tamil Nadu
Rep. by its Secretary to the Government
Revenue Department
Fort St.George
Chennai 600 009.

2.The District Collector
Office of the District Collectorate
Cuddalore.

3.The Revenue Divisional Officer
Cuddalore District.

..Review Applicants
Respondents

Vs.

Gabriel
S/o.Mariassoosai
Village Administrative Officer
(Under Suspension)
Vadakku Melur Village
Kurinjpadi Taluk
Cuddalore District.

.. Respondent

PRAYER: Review Petition has been filed under Order 47 Rule 1 of CPC r/w Section 114 of C.P.C., to review the order dated 19.09.2025 in WP.No.26927 of 2024



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For Petitioners : Mr.M.Suresh Kumar
Additional Advocate General
Asst.by:
Ms.P.Aishwarya
Government Advocate

For Respondent : Mr.M.Elumalai

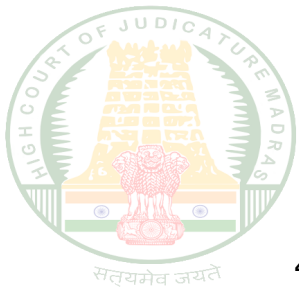
ORDER

This review application has been filed to review the order passed in the writ petition on the ground that there is an error apparent on the face of the order.

2.Heard Mr.M.Suresh Kumar, learned Additional Advocate General for the review applicants and Mr.M.Elumalai, learned counsel for the respondent.

3.When this Court disposed of the writ petition by order dated 19.09.2024, this Court gave the following direction :

9. In view of the above, there shall be a direction to third respondent to deal with the representation made by the petitioner on 23.08.2023 and the third respondent shall pass appropriate orders for disbursement of the benefit of earned leave and unearned leave on private affairs, provident fund, if any, special provident fund, if any and those benefits shall be paid to the petitioner within a period of eight (8) weeks from the date of receipt of a copy of this order.



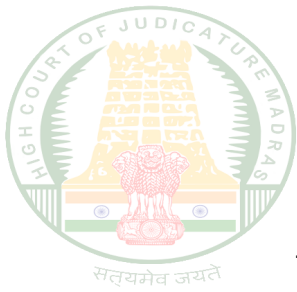
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4.The above direction was issued by this Court considering two earlier Division Bench orders. When the order was passed, the notice of this Court was not drawn to GO.Ms.No.100 dated 07.09.2022, whereby an amendment was brought forth to FR 52 by including FR 52B. The second proviso to sub rule 3 of FR 52B provides that encashment of earned leave and leave on private affairs can be deferred to the government servants who are not permitted to retire from service on attaining the age of superannuation but retained in service under FR 56(1)(c), till the enquiry into the charge of misconduct or criminal misconduct is concluded and final orders are passed.

5.The relevant government order through which the above amendment was brought forth is subsequent to the two Division Bench orders that was relied upon by this Court while disposing of the writ petition.

6.The learned counsel for the respondent/writ petitioner submitted that such amendment is ex facie illegal and unconstitutional. It was further submitted that the review applicants were aware of this amendment and inspite of the same they never brought it to the notice of this Court. Therefore, they cannot take advantage of the same and seek for review of the order passed in the writ petition.



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7.In the considered view of this Court, the constitutionality or otherwise of a provision cannot be decided in collateral proceedings. A specific challenge must be made and the government must be given an opportunity before holding any provision as illegal or unconstitutional.

8.It is true that even as on the date when the writ petition came up for hearing on 19.09.2024, the amendment had already come into force. However, unfortunately, the same was not brought to the notice of this Court. That does not mean that the order passed by this Court can be given effect by disregarding a rule which was in force as on the date of passing the final order in the writ petition.

9.In view of the above, the direction issued by this Court insofar as directing the review applicants to settle encashment of earned leave and leave on private affairs is concerned, is an error apparent on the face of the order which requires review of the order passed in the writ petition.

10.The learned counsel for the writ petitioner submitted that the petitioner has not been paid the subsistence allowance and the petitioner has not been settled with all other monetary entitlements as was directed by this Court.



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11.The learned Additional Advocate General seeks for time to take instructions in this regard and to instruct the review applicants to settle the amounts to the writ petitioner, if it has not already been settled.

12.The above issue raised by the learned counsel for the writ petitioner can be dealt with in the pending contempt petition.

13.In the light of the above discussion, the order passed in the writ petition on 19.09.2024, is reviewed insofar as directing the review applicants to settle the encashment of earned leave and leave on private affairs, is concerned. These payments can be deferred till the enquiry into the charge of misconduct is concluded or final orders are passed. However, insofar as the other payments to which the writ petitioner is entitled, the same has to be settled to the writ petitioner.

14.This review application is disposed of in the above terms. No costs.

07.07.2025

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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N.ANAND VENKATESH, J.

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To

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