

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2016

CORAM :

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P(MD)No.1484 of 2016

T.Veeravinothan

... Petitioner

Vs.

1.The Registrar of Cooperative Societies,
Kilpauk, Chennai.

2.The Joint Registrar/Managing Director,
Thanjavur District Central Cooperative Bank Ltd.,
Thanjavur.

3.The Joint Registrar/Managing Director,
Thiruchirappalli District Central Cooperative Bank Ltd.,
Thiruchirappalli.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the original impugned order in RC.No.846/02-03 E2, dated 07.09.2015 and quash the same as illegal and further directing the second respondent to pay the cash equivalent of the petitioner's earned leave, issue suitable direction within the time contemplated in the provisions of law without delay.

For Petitioner : Mr.G.M.Xavier
For R-1 & R-2 : Mr.T.R.Janarthanam,
Additional Government Pleader
For R-3 : Mr.Shanmugaraja Sethupathi

ORDER

Since the matter lies in a narrow compass, the Writ Petition is taken up for final disposal by consent of both parties.

2. The petitioner joined duty as Branch Manager in the second respondent bank on 16.06.1976 and was promoted as General Manager in due course on 12.06.2002. While so, he was dismissed from service by an order, dated 27.01.2010. He rendered 34 years of service at the time of dismissal.

3. The grievance of the petitioner is that had he continued in service, he could be reached the age of superannuation on 30.06.2012. It is the claim of the petitioner that he is entitled to Earned Leave Encashment benefit of Rs.2,28,128/-

as there are 138 days of earned leave to his credit during the service period of the petitioner. But the claim of the petitioner was rejected by the order, dated 30.09.2015 on the ground that the petitioner is not eligible for the same since he is dismissed from service. Hence, this Writ Petition.

4. The learned counsel for the petitioner has relied on the judgment, dated 17.09.2014 in WP.No.7986 of 2013, wherein I have held that even a dismissed employee is entitled to Earned Leave Encashment Benefit. In the said order, dated 17.09.2014 in W.P.No.7986 of 2013, I relied on the order, dated 04.07.2012 in W.P.No.9519 of 2012. Further, in my order dated, 17.09.2014 in W.P.No.7986 of 2013, I placed reliance on a Full Bench judgment of the Punjab and Haryana High Court, dated 09.11.2012 in L.P.A.No.113 of 2012.

5. On the other hand, the learned counsel for the respondent bank has vehemently contended that as per the bylaw No.8, the employee is entitled to earned leave encashment benefit only when he is superannuated and not in the case of dismissal.

6. The learned counsel for the respondent bank has relied on the following passage in bylaw No.8 of the said bylaws of the respondent bank:

“It shall be competent to the authority sanctioning privilege leave to permit the employees to encash the privilege leave at their credit on the date of superannuation subject to the maximum period as may be specified by the State Government from time to time for which necessary regulations will be framed under this bylaw and approval of the Registrar obtained.”

7. I have considered the submissions made by either side.

8. A Full Bench of the Punjab and Hariyana High Court rendered a judgment, dated 09.11.2012 in L.P.A.No.113 of 2012 considering the issue at length and came to its conclusion in paragraph No.12 of the said judgment.

Paragraph No.12 of the said judgment is extracted hereunder:

“12. We are, therefore, in agreement with the view taken by the Division Bench of this Court in B.S.Gupta’s case(supra) holding that amount of leave encashment is payable to the retiring employee notwithstanding the pendency of the departmental enquiry or criminal proceedings.”

9. Apart from Paragraph No.12, the following passage in Paragraph No.10 of the said judgment is also relevant to extract hereunder:

“..... The Court in that case was concerned with the leave encashment. Finding that there was no rule permitting the Government to withhold the benefit of leave encashment, the Court held that it could not be withheld. Reason given was that leave encashment partakes the character of salary, which is a property and, thus withholding thereof in the absence of statute would mean depriving a person of his property without statute or law which would be violative of Article 300 A of the Constitution of India. This is so stated in the following terms:-

“25. Before we go into the legal sanctity of the circular, it must be remembered that the Leave Encashment is paid on account of unutilized leave and therefore, it partakes the character of salary. Pension is no longer considered as a bounty. The salary is a property given to the hands of the State which cannot be withheld except under the powers derived by a statute or law as contemplated under Article 300A of the Constitution of India as laid down by the Supreme Court in MANU/SC/0046/1988:AIR1988SC1407 [State of U.P. v. Haji Ismail Noor] and MANU/SC/0325/2003: [2003]3SCR779 [K.S.R.T.C v. K.O.Varghese].

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28.The above executive instruction is not a law under Rule 300A of the Constitution of India. In the absence of any statutory rule, how can it be claimed that the Leave Encashment can be withheld by the Government on the Strength of the Executive Instructions?”

10. The Full Bench of the Punjab and Haryana High Court in the above said judgment has categorically held that even if departmental or criminal proceedings against an employee is pending, when he reaches the age of superannuation, the Earned Leave Encashment benefit shall be paid and the same cannot be withheld, ie., even ultimately the concerned employee could be dismissed from service pursuant to the departmental proceedings, the employer cannot withhold the Earned Leave Encashment benefit. The reason given by the Full Bench is that Earned Leave Encashment benefit is property under Article 300 A of the Constitution of India and the same cannot be deprived illegally.

11. Hence, I am of the view that the impugned order, dated 07.09.2015 passed by the second respondent, is liable to be interfered with. Further, while following the aforesaid judgment of the Full Bench Judgment of the Punjab and Haryana High Court and also the order, dated 04.07.2012 in W.P.No.9519 of 2012, I have held as follows in paragraph No.10 of the order, dated 17.09.2014 in W.P.No.7986 of 2013:

10. *The learned counsel for the petitioner relied on a judgment of this Court in W.P.No.9519 of 2012, dated 04.07.2012 to contend that even in the case of dismissal, Earned Leave Encashment cannot be denied, since it was only the wages that are payable to the petitioner. The following passage may be usefully extracted below:-*

"4.In view of the filing of the additional affidavit by the petitioner and having regard to the fact that special provident fund, general provident fund and encashment of earned leave cannot be withheld by the respondents even if she is dismissed from service after conclusion of the departmental proceedings, this Writ Petition is disposed of with a direction to the respondents to pay the petitioner the amount payable to her in respect of General Provident Fund, Special Provident Fund and encashment of earned leave to her credit within a period of four weeks from the date of receipt of a copy of this order."

12. But the learned counsel for the respondent bank has sought to argue that since the petitioner did not attain the age of superannuation, but was dismissed, the petitioner is not entitled to Earned Leave Encashment benefit. He has placed reliance on bylaw No.8 , which is extracted above.

13. In my considered view, the said bylaw cannot be interpreted to mean that in the case of dismissal, Earned Leave Encashment benefit could not be given.

14. If such a view is taken, no employee could accumulate his Earned Leave to his credit, which will go against the interest of employer also.

15. On the other hand, if an employee has chosen to accumulate his earned leave to his credit, the encashment of the same cannot be deprived on the dismissal, since his Earned Leave to his credit is nothing but his property as held by the Full Bench of the Punjab and Haryana High Court.

16. Likewise, in this case, the issue is only relating to payment of Earned Leave Encashment Benefit. The same principle that is applicable to Earned Leave Encashment Benefit is also applicable to the payment of General Provident Fund and to the contribution made by a Government employee to Special Provident Fund. In the case of industrial employees, the contribution made by the industrial workman to the Provident Fund from his wages could not be deprived by the employer even if he is dismissed from service.

17. The learned counsel for the respondent bank has stated that the petitioner was paid his Provident Fund contribution made to his Provident Fund Account. On the same reasoning, I am of the view that the petitioner is entitled to Earned Leave Encashment benefit also.

18. For all the above reasons, the Writ Petition is allowed and the impugned order, dated 07.09.2015 passed by the second respondent, is quashed and a direction is issued to the second respondent to settle the Earned Leave Encashment benefit to the petitioner, which is due to him based on the Earned Leave accumulation to his credit, within a period of six weeks from the date of receipt of a copy of this order. No Costs.

29.01.2016

Index:Yes

Internet:Yes

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Note:Issue Order Copy on 09.02.2016

To

- 1.The Registrar of Cooperative Societies, Kilpauk, Chennai.
- 2.The Joint Registrar/Managing Director,
Thanjavur District Central Cooperative Bank Ltd., Thanjavur.
- 3.The Joint Registrar/Managing Director,

Thiruchirappalli District Central Cooperative Bank Ltd.,
Thiruchirappalli.

D.HARIPARANTHAMAN, J.

pm

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