

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 31.03.2016****CORAM:****THE HONOURABLE MR.JUSTICE T.RAJA****W.P.No.23372 of 2015**

C.H.Manohar

... Petitioner

Vs.

The State of Tamil Nadu represented by

1. The Principal Secretary to Government,
Finance (T&A I) Department,
Fort St.George,
Chennai – 9,

2. The Commissioner of Treasuries and Accounts,
Panagal Building,
Saidapet,
Chennai – 15.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of certiorarified mandamus to call for the records relating to the impugned orders namely letter No.42435/Ka.Ka. 1/2013 dated 20.8.13 issued by 1st respondent and letter No.26396/2011/Q1 dated 9.3.2012 of the 2nd respondent, quash the same and consequently to direct the respondents to issue orders granting the encashment of 30 days Earned Leave as on 16.10.2001 and to pay the benefit within the time frame as may be fixed by this Court.

For Petitioner : Mr.C.H.Manohar-
party in person

For Respondents : Mr.R.Vijayakumar,
Addl.Govt.Pleader

ORDER

The petitioner – C.H.Manohar retired from the post of Treasury Officer on 31.3.2011. He has come to this Court challenging the impugned orders namely letter No.42435/Ka.Ka. 1/2013 dated 20.8.2013 issued by 1st respondent – Principal Secretary to Government, Finance (T&A I) Department and letter No.26396/2011/Q1 dated 9.3.2012 of the 2nd respondent – Commissioner of Treasuries and Accounts, Panagal Building, Saidapet, Chennai and to quash the same with a consequential direction to the respondents to issue orders granting encashment of 30 days Earned Leave as on 16.10.2001 and to pay benefit within the time frame to be fixed by this Court.

2. The petitioner was serving as Additional Sub Treasury Officer at Kangeyam from 3.6.1999 to 12.6.2000. He was given promotion as Assistant Accounts Officer on 13.6.2000 at Udhagamandalam. Subsequently he was suspended from service with effect from 14.7.2000 to 18.2.2002. After some time, on representation, the entire period of suspension was regulated as "duty", treating the same as "compulsory wait" in G.O.(2D) No.31 Finance (T& AI) Department dated 27.5.2004 giving him the financial benefit accrued during the suspension period as per Ruling (3) under Rule 9(6)(b) read with Rule 20 of the Fundamental Rules. Therefore, the petitioner made a representation on 21.6.2004 to the 2nd respondent seeking encashment of earned leave for 30 days fell due on 16.10.2001 as per G.O.Ms.No.1089 Personnel and Administrative

Reforms (F.R. II) Department dated 1.11.1980 read with Government letter No.16216/83-1 P&AR (FR III) Department dated 18.4.1983. However, his representation was rejected.

3. Assailing the impugned order, the petitioner, who is appearing in person, submitted that when the entire period of suspension of the petitioner was treated as duty/eligible leave and the same was regularized in G.O. (2D) No.31, Finance (T&A-I) Department, dated 27.05.2004, the petitioner has made an application within a period of one month i.e. on 23.06.2004 as per the Rule. Thus, he pleaded that the respondent cannot say ironically that the request of the petitioner cannot be entertained, because, a general ban order was imposed for the period from 28.11.2001 to 19.10.2004 not to sanction the surrender leave salary to any of the Government servant. It is further stated that the respondents have also in paragraph No.6 of the counter affidavit admitted that the claim of the petitioner fell due on 16.10.2001 i.e. prior to the ban period, but he had applied for the said surrender only on 23.06.2004, during which the ban imposed was in force, Therefore, the contention of the respondents that the petitioner has made an application during the ban period is unjust and unfair and on that basis, he prayed for quashing the impugned order.

4. It is submitted by the learned Additional Government Pleader appearing for the respondents that the claim of the petitioner was rejected in view of the ban order imposed by the Government on the ground that the

application for the surrender leave salary was made by the petitioner during the ban period, which was in force.

5. This Court is unable to agree with the submission made by the learned Additional Governemnt Pleader. It is the claim of the petitioner that he was placed under suspension from service by G.O.Ms.No.316, Finance (T&A-1) Department dated 6.7.2000. This suspension order was revoked in G.O.(2D) No.6, Finance (T&A-1) Department dated 21.1.2002, based on the order passed by the Tamil Nadu Administrative Tribunal in O.A.No.5110 of 2000 and M.A.No.1264 of 2001. Again, by another G.O.(2D) No.31, Finance (T&A-1) Department dated 27.05.2004, the period of suspension was regularised as follows:-

Period	Details of regularization
14.07.2000 to 08.08.2000	Leave to which the petitioner is eligible other than unearned leave on Medical Certificate
09.08.2000 to 18.02.2002	Compulsory wait

Therefore, when the period of suspension of the petitioner has been regularised by order dated 29.6.2004 in the following manner,

Period	Details of regularization
14.07.2000 to 08.08.2000	Earned leave
09.08.2000 to 18.02.2002	Compulsory wait

the petitioner made a request to permit him to surrender 30 days of earned leave as on 16.10.2001 stating that the period of suspension from 14.7.2000 to

18.2.2002 has been regulated as duty. This has been wrongly rejected by the respondents on the ground that he is not eligible to surrender earned leave as on 16.10.2001, since he had applied for the said surrender of earned leave only on 23.6.2004 when the ban order was in force. The reason adduced by the respondents for rejection of the request of the petitioner is wholly unsustainable. Firstly, when the Government has suspended the facility of surrender of earned leave from 28.11.2011 to 19.10.2004, it has been admitted by the respondents that the claim of the petitioner fell due on 16.10.2001, which is much prior to the ban period. However, the petitioner has applied for the said surrender leave facility only on 23.6.2004, during which period the ban imposed was in force. Therefore, the point deserves consideration herein is when the surrender of earned leave facility has not fallen due during the ban period, namely, from 28.11.2001 to 19.10.2004, as it admittedly fell due on 16.10.2001 much prior to the ban period, the submission of the application on 23.6.2004 cannot be put against the petitioner for rejection of his request. Therefore, making an application during the ban period cannot be taken as a valid ground to reject the case of the petitioner, because during the ban period, the petitioner's claim did not fall. Hence, as mentioned above, when the claim of the petitioner fell due on 16.10.2001 prior to the ban period, his claim is legally valid.

6. For the aforesaid reason, the writ petition stands allowed and the impugned orders are set aside and the respondents are directed to issue order in

favour of the petitioner granting encashment of 30 days earned leave as on on 16.10.2001 forthwith, preferably within a period of four weeks from the date of receipt of a copy of this order. No costs.

31.03.2016

Index:Yes/No

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T.RAJA, J.

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