

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-01-2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K.AGNIHOTRI
AND
THE HON'BLE DR.JUSTICE P.DEVADASS

Writ Appeal No.1700 of 2015
and
M.P.No.1 of 2015

- 1.The Joint Registrar of Co-Operative Societies,
Nagapattinam Region,
Nagapattinam.
 - 2.The Deputy Registrar of Co-Operative Societies,
Nagapattinam Circle,
Nagapattinam.
- APPELLANTS/RESPONDENTS

Vs.

R.ChithraveluRESPONDENTS/WRIT PETITIONER

Appeal filed under Clause 15 of the Letters Patent against the order dated 19.6.2015 made in W.P.No.17512 of 2015 on the file of this Court.

Writ Petition filed under Article 226 of the constitution of India praying for the issuance of a writ of Mandamus, directing the respondents to sanction and settle the personal benefits like General Provident fund Special Provident Fund and Encashment of Earned Leave/Private Affairs within a reasonable period as may be fixed by this Court.

For Appellants: Ms.T.P.Savitha,
Government Advocate.

For Respondent : Mr.T.Ranganathan

JUDGMENT

(JUDGMENT OF THE COURT WAS MADE BY DR.P.DEVADASS, J.)

The Official Respondents, namely, the Joint Registrar of Co-Operative Societies and the Deputy Registrar of Co-Operative Societies, Nagapattinam in W.P.No.17512 of 2015 have

appealed as against the order of the Writ Court passed on 19.6.2015.

2. Chithravelu, the writ petitioner, joined the Co-Operative Department as Junior Inspector of Co-Operative Societies on 16.12.1985. On promotion, he became a Co-Operative Sub-Registrar. He is to retire on 30.4.2014 on superannuation. On 25.4.2014, while he was Sub-Registrar (P.D.S.), Thirumarugal, the Joint Registrar of Co-Operative Societies, Nagapattinam Region placed him under suspension under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules pending enquiry into certain grave charges.

3. On 30.4.2014, the writ petitioner was not permitted to retire on superannuation. On 11.2.2014, he requested the Joint Registrar of Co-Operative Societies, Nagapattinam to sanction him his GPF, SPF accumulations and encashment of Earned Leave and Leave on Private Affairs. Since it was not paid, he filed WP No.17512 of 2015. In view of the pending enquiry, his plea was opposed by the Department.

4. The Writ Court after considering the respective submissions and placing reliance on a Full Bench judgment of the Punjab and Haryana High Court, directed the Official Respondents to disburse him the said amounts as under:-

"According to the petitioner, he is entitled to receive these items even if he is ultimately dismissed from service. I am in agreement with the submission of the learned counsel for the petitioner. It is useful to refer to a Full Bench judgment of the Punjab and Haryana High Court dated 9.11.2012 in Letters Patent Appeal No.113 of 2012 in Punjab State Civil Supplies Corporation Ltd., and Others vs. Pyare Lal. The relevant portions are extracted hereunder:-

"10.
Before we go into the legal sanctity of the Circular, it must be remembered that the Leave Encashment is paid on account of unutilised leave and therefore, it partakes the character of salary.

12. We are, therefore, in agreement with the view taken by the Division Bench of this Court in B.S. Gupta

Vs. Uttar Haryana Bijli Vitran Nigam Limited and others {2006 (8) SLR 690} holding that amount of leave encashment is payable to the retiring employee notwithstanding the pendency of the departmental enquiry or criminal proceedings."

I am of the view that the same principle would apply in the case of payment of General Provident Fund and contribution of the Government employee to Special Provident Fund also.

Hence, a direction is issued to the first respondent to settle the General Provident Fund, contribution of the petitioner to Special Provident Fund and Earned Leave Encashment, within a period of six weeks from the date of receipt of a copy of this order."

5. The learned Government Advocate submitted that in view of the pending enquiry vide Fundamental Rule 56(1)(c) his services were extended, the writ petitioner was not permitted to retire, as per the clarification issued by the Government in its letter dated 17.9.1990 he could be paid the said amounts only after the finalisation of the enquiry proceedings pending against him and this aspect has been overlooked by the Writ Court.

6. The learned counsel for the writ petitioner/respondent contended that these amounts are his own amounts partaking the character of salary and they cannot be withheld by the Government on account of any pending enquiry and even if he is dismissed from service, these amounts are liable to be paid to him.

7. We have anxiously considered the rival submissions, perused the impugned order of the Writ Court and the materials on record.

8. The amounts so collected from the employee from his salary and credited to his General Provident Fund Account, Special Provident Fund Account and his Earned Leave and Leave Earned on Private Affairs amounts partakes the nature of salary earned by him during his service. They are his money. They cannot be withheld even if disciplinary proceedings are initiated against him.

9. In this respect the Writ Court has rightly placed its reliance on the Full Bench judgment of the Punjab and Haryana High Court in Punjab State Civil Supplies Corporation Ltd., and Others vs. Pyare Lal {LPA No.113 of 2012 dated 9.11.2012}.

10. Further, in Rule 7(1) of the Tamil Nadu Leave Rules 1933, quoted by the learned counsel for the appellants, there is no prohibition for the payment of Earned Leave and Leave on Private Affairs to those who are facing any enquiry after the date of retirement. In such circumstances, the clarification letter of the Government dated 17.9.1990 cannot alter the above position of law. Thus, in the circumstances, no interference is called for.

11. In view of the foregoing, this Writ Appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Registrar of Co-Operative Societies,
Nagapattinam Region,
Nagapattinam.

2.The Deputy Registrar of Co-Operative Societies,
Nagapattinam Circle,
Nagapattinam.

+1cc to Mr.T.Ranganathan, Advocate, S.R.No.2906
+1cc to the Government Pleader, S.R.No.3294

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jsv(CO)
srg(03/02/2016)