

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

W.P.No.26386 of 2016
and
W.M.P.Nos.22618 & 22619 of 2016

G.Devadhas

... Petitioner

Vs.,

The Secretary to Government
Handlooms, Handicrafts,
Textiles and Khadi Department,
Secretariate,
Chennai-600 009.

... Respondent

Prayer: Writ Petition has been 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 impugned order of the respondent issued in Letter No.8833/A1/2015-1, Handlooms, Handicrafts, Textiles and Khadi Department, dated 01.03.2016 and to quash the same and consequently, to direct the respondent to sanction Special Provident Fund and Encashment of Earned Leave/Private Affairs due to the petitioner as on the date of his superannuation on 30.06.2012, within a reasonable period.

For Petitioner : Mr.T.Ranganathan

For Respondents : Mr.C.Jagadish, Spl. GP

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus,

calling for the records relating to the impugned order of the respondent issued in Letter No.8833/A1/2015-1, Handlooms, Handicrafts, Textiles and Khadi Department, dated 01.03.2016 and to quash the same and consequently, to direct the respondent to sanction Special Provident Fund and Encashment of Earned Leave/Private Affairs due to the petitioner as on the date of his superannuation on 30.06.2012, within a reasonable period.

2. In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

2-1. The petitioner was initially appointed as Junior Assistant in the year 1975 and subsequently, promoted as Assistant (now re-designated as Assistant Section Officer) in the year 1977 and as Section Officer in the year 1994. He was further promoted as Under Secretary to Government in the year 2006 and allotted to the respondent's Department and continued as Under Secretary to Government till the date of his superannuation on 30.06.2012.

2-2. During the year 2008, the petitioner was placed under suspension vide G.O.(3D).No.16, P & A.R. Department, dated 27.06.2008, in connection with the Departmental proceedings and criminal proceedings initiated in connection with the allotment of plots to the members in the Okkiyam Thoraipakkam Housing Scheme, Kancheepura District, as he was the Vice President of the Tamil Nadu Secretariat Employees Co-operative Housing Society. The Government has not permitted him to retire from service on 30.06.2012 on attaining the age of superannuation vide G.O.(3D) No.5, P & A.R. Department, dated 30.06.2012. The petitioner has been paid subsistence allowance upto 30.06.2012 and subsequently, provisional pension from 1.07.2012.

2-3. While so, on attaining the age of superannuation on 30.06.2012, without prejudice to the orders of the respondent not permitting him to retire from service, the petitioner submitted a representation dated 27.09.2013 initially to settle his General Provident Fund, Special Provident Fund and Encashment of Earned Leave/Private Affairs at his credit on 30.06.2012, as these three personal benefits cannot be withheld by the Employer since the Secretary to Government has no powers to withhold the personal benefits due to him. Subsequently, the respondent has sanctioned his General Provident Fund alone. Thereafter, the petitioner again submitted a representation on 11.10.2014, requesting for sanction of Special Provident Fund and Encashment of Earned Leave/Private Affairs at his credit. Now, the respondent has passed the impugned order, rejecting the request of the petitioner. Aggrieved over the same, the petitioner has come forward with the present writ petition before this Court for the relief as stated supra.

3. When the matter is taken up for consideration, the learned counsel for the petitioner, by relying on the decision of the Full Bench of the Punjab and Haryana High Court, in the case of Punjab State Civil Supplies Corporation Limited Vs. Pyare Lal, in L.P.A.No.113 of 2012, dated 09.11.2012, submitted that in the said case, while deciding the issue as to whether the employer can withhold the encashment of Earned Leave in full or part of it, permanently or temporarily due to the pendency of a departmental or criminal proceedings or on the ground that the retired employee is convicted in a judicial proceedings or found guilty in a departmental proceeding, the Full Bench of Punjab and Haryana High Court held that the amount of leave encashment is payable to the retiring employee notwithstanding the pendency of the departmental enquiry or criminal proceedings. The said decision of the Punjab and Haryana High Court was followed in different writ petitions.

4. The learned counsel for the petitioner would further submit that, by following the above said decision of the Full Bench of Punjab and Haryana High Court, the learned single Judge of this Court in W.P.No.8518 of 2013, dated 03.09.2014, [D.Muruganandam Vs Secretary of Government, Municipal Administration and Water Supply Department, Secretariat, Fort St.George, Chennai] has allowed the writ petition and given direction to the respondents therein to pay GPF, SPF and amount towards encashment of earned leave to the petitioner.

5. Thus, the learned counsel for the petitioner submitted that following the above cited decisions, similar order could be passed in the present writ petition also.

6. Heard the learned Special Government Pleader appearing for the respondent also and perused the materials available on record.

7. As submitted by the learned counsel for the petitioner, in an identical matter, by following the decision of the Full Bench of Punjab & Haryana High Court in the case of Punjab State Civil Supplies Corporation Limited Vs. Pyare Lal, in L.P.A.No.113 of 2012, dated 09.11.2012, this Court has allowed the writ petition in W.P.No.8518 of 2013, [D.Muruganandam Vs Secretary of Government, Municipal Administration and Water Supply Department, Secretariat, Fort St.George, Chennai] vide order dated 03.09.2014, and given direction to the respondents therein to pay GPF, SPF and amount towards encashment of earned leave to the petitioner. Following the same, I am of the opinion that in the instant case also, an appropriate direction could be given to the respondent herein.

8. Accordingly, the writ petition is allowed and the impugned order is set aside and the respondent is directed to pay the Special Provident Fund and Encashment of Earned Leave/Private Affairs due to the petitioner as on the date of his superannuation on 30.06.2012, within a period of eight weeks, from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(ccc)

//True Copy//

Sub Assistant Registrar

To,

1.The Secretary to Government
Handlooms, Handicrafts,
Taxtiles and Khadi Department,
Secretariate,
Chennai-600 009.

+1cc to Mr.T.Ranganathan Advocate, S.R.No.54364
+1cc to the Government Pleader, S.R.No.54699

W.P.No.26386 of 2016and
W.M.P.Nos.22618 & 22619 of 2016

CO (KGK)
CP 24/10/2016

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