



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

and

THE HONOURABLE MS. JUSTICE V.M. VELUMANI

W.A. (MD) No. 141 of 2016

and

C.M.P (MD) No. 637 of 2016

The Deputy Inspector General of Police,
Tiruchirapalli Range,
Trichy - 1.

... Appellant

Vs.

S.P.Selvaraj

... Respondent

PRAYER: The Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order passed by this Court in W.P. (MD) No. 11133 of 2015, dated 08.07.2015.

PRAYER in WP (MD). 11133/ 2015 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus by directing the respondent to release the withheld Provident Fund (GPF) Earned Leave Encashment and gratuity to the petitioner in the light of the law laid down by this Honourable Court in Judgement reported in WP.No. 15875 and 15926/2013 dated 02.12.2013.

For Appellant : Mr.D.Muruganandam
Addl.Govt.Pleader

For Respondent : Mr.V.Vijay Shankar

JUDGMENT

(Judgment of this Court was made by M.SATHYANARAYANAN, J.)

By consent, the Writ Appeal is taken up for final disposal.

2. The petitioner while working as Inspector of Police, Siruganur Police Station, Trichy District, he was trapped and arrested at 20.45 Hours on 01.11.2006, by the Vigilance and Anti Corruption, Tiruchirapalli, for the alleged demand and acceptance of Rs.6000/- from Thiru.Srinivasan S/o.Krishnasamy,



Peragambi Village, Siruganur P.S., for booking a case of simple offence, instead of booking a case for graver offence, against him, and in this regard a case in V&AC Crime No.15 of 2006 was registered for the offence under Sections 7 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988.

3. The petitioner was placed under suspension by invoking Sub Rule 3(3)(1)(ii) of Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, 1955. The petitioner had reached the age of superannuation and therefore, the appellant herein vide proceedings, dated 22.02.2007 has not permitted him to retire from service and also detained in service until the conclusion of the disciplinary proceedings.

4. The petitioner had filed W.P.(MD)No.11133 of 2015 praying for issuance of a Writ of Mandamus, directing the respondents to release the entire admissible amount of Gratuity, Provident Fund (GPF), and Earned Leave Encashment, in the light of the Common Order, dated 02.12.2013 made in W.P.(MD)Nos.15975 and 15926 of 2013. The Learned Single Judge of this Court, vide order dated 08.07.2015 directed the appellant / respondent to release the entire admissible amount to the petitioner within the stipulated time and also directed the conclusion of the departmental enquiry as expeditiously as possible with a further direction to the writ petitioner to co-operate for expeditious conclusion. The officials respondents aggrieved by the said order had filed this writ appeal.

5. Mr.D.Muruganandam, the learned Additional Government Pleader appearing for the appellant would submit that admittedly, the respondent / writ petitioner has involved himself in the commission of offence of moral turpitude and the criminal prosecution in Special C.C.No.60 of 2011, which is pending on the file of the Court of Special Judge for trial of case under Prevention of Corruption Act, Tiruchirappalli, and it is yet to be concluded and in the event of conviction, the respondent is also likely to be dismissed from service and therefore, the order directing the dispersal of certain benefits in his favour cannot be sustained and prays for interference.

6. Per contra, Mr.V.Vijay Shankar, the learned counsel appearing for the respondent / writ petitioner has invited the attention of this Court to Section 69 of the Tamil Nadu Pension Rule, 1978 and would submit that even assuming that the petitioner is found guilty either in criminal prosecution or departmental proceedings, he is not entitled to get Pension at all and so also his Gratuity and the petitioner seeks only for his legal entitlement and the Learned Judge by following the earlier orders has rightly accorded such a benefits in favour of



the petitioner and prays for dismissal of the Writ Appeal. The learned counsel appearing for the respondent in support of his contention has also placed reliance upon the Judgment of the Hon'ble Supreme Court in **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.**, reported in **(AIR 2013 SC 3383)** and would submit that the Hon'ble Supreme Court of India, in the light of the facts and circumstances has opined that the Gratuity and pensions are not bounties, since an employee earns these benefits by dint of his long, continuous, faithful and unblemished service, despite the pendency of the criminal prosecution he is entitled to the same.

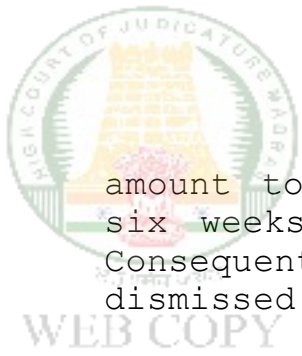
7. This Court paid its best attention to the rival submission and also perused the materials produced before it.

8. Insofar as the Provident Fund Contribution is concerned, the petitioner out of his salary made the contribution and for leave encashment is concerned, on account of his service, he has earned the Earned Leave and as such, he is entitled to surrender and get the encashment. The learned counsel appearing for the respondent would also submit that the respondent is also entitled to half pay earned leave also.

9. The Learned single Judge of this Court in the order dated 02.12.2013 in W.P.(MD)No.15875 and 9595 of 2015 has also taken into consideration the said aspect and accorded the relief. However, in the light of the Rule 69 of the Tamil Nadu Pension Rules, this Court is of the considered view that the petitioner is not entitled to get the Gratuity amount; however, he is entitled to get Earned Leave Encashment and Provident Fund (GPF) and insofar as the prayer made by the learned counsel appearing for the respondent that the respondent is also entitled to half pay earned leave is concerned, it is open to the respondent to submit a representation to the appellant, within a period of two weeks from the date of receipt of a copy of this order and the appellant, on receipt of the same, is directed to consider the same and pass orders on the same, in accordance with law within a further period of two weeks thereafter.

10. This Court on an independent application of mind on the entire materials is of the view that the direction given by the Learned Judge for dispersal of the Earned Leave Encashment as well as Provident Fund (GPF) cannot be disturbed and the learned Judge has also indicated that the respondent / writ petitioner is entitled to get only the admissible amount.

11. In the result, the Writ Appeal is dismissed, confirming the order made W.P.(MD)No.11133 of 2015, dated 08.07.2015. The appellant is directed to disburse the admissible



amount to the respondent / writ petitioner within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar

To

The Deputy Inspector General of Police,
Tiruchirapalli Range,
Tiruchirappalli.

+1 cc to Mr.V.Vijay Shankar in SR No.55291

+1 cc to the Govt.Pleader in SR No.55573

W.A. (MD) No.141 of 2016
23.09.2016

mpk

anr/ss2/25.10.2016/4p/4c