



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE **S.VIMALA**

W.P (MD) No.21465 of 2016

P.Jeyaraman

: Petitioner

Vs.

1.The Principal Secretary to Government,
Home (Police-XVII) Department,
Fort St. George, Chennai - 600 009.

2.The Director,
Fire and Rescue Department,
Chennai.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the second respondent to claim and pay the earned leave encashment benefits along with remaining 10% of the Provident Fund amount to the petitioner with interest.

For Petitioner : Mr.S.Chellapandian

For Respondents : Mr.A.Muthukaruppan,
Additional Government Pleader.

O R D E R

This writ petition has been filed for issuance of a Writ of Mandamus, directing the second respondent to claim and pay the earned leave encashment benefits along with remaining 10% of the Provident Fund amount to the petitioner with interest.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, who took notice for the respondents. By consent, the writ petition itself is taken up for final disposal.

3.The case of the petitioner is that the petitioner was appointed as a Station Fire Officer on 11.05.1987. Thereafter, he was promoted as a Divisional Fire Officer on 03.07.2010 and posted at Tuticorin. While he was working at Theni Division, he was suspended from service on 31.03.2013, on account of the department proceedings initiated due to the pendency of criminal case in C.C.No.19 of 2013 on the file of the learned Chief Judicial



Magistrate, Theni. Later on, revoking the order of suspension, he was retained in service, vide G.O.Ms.No.68., dated 13.01.2016. His date of superannuation is 31.01.2016 A.N. The respondent has retained 10% of Provident Fund amount payable to the petitioner, stating the reason that a criminal case was pending on the date of his superannuation. The petitioner was also not provided with encashment of earned leave. Claiming those benefits, the petitioner has given a representation dated 09.03.2016, followed by the reminder dated 15.09.2016. As those representations are not considered, this writ petition has been filed.

4.The learned counsel for the petitioner would submit that there is no justification on the part of the respondents to reject the claim of the petitioner as the legal position is well settled by this Court as per the order dated 29.01.2016 made in W.P(MD) No.1484 of 2016, under which, relying upon the Full Bench decision of the Punjab and Haryana High Court dated 09.11.2012 made in L.P.A.No.113 of 2012, this Court has held that even a dismissed employee is entitled for encashment of earned leave at his credit.

5.The learned Additional Government Pleader appearing for the respondents would submit that it is agreeable for the respondents to consider the representation of the petitioner and to pass suitable orders in accordance with law.

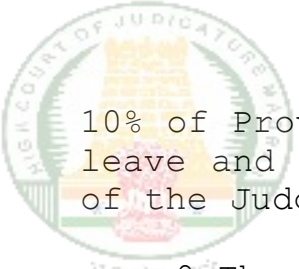
6.In reply to that, the learned counsel appearing for the petitioner would submit that in a similar case of this nature, despite the Court passed such an order, the respondent did not consider the claim and also has driven the petitioner to file a contempt petition and therefore straight away, this Court may direct the respondents to provide the relief of return of 10% of the Provident Fund amount as well as encashment of earned leave salary.

7.Paragraph No.8 of the Judgment of this Court rendered in W.P (MD) No.1484 of 2016, dated 29.01.2016, is extracted here under:

"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".

8.The legal position that even a dismissed employee is entitled for encashment of leave salary, is not in dispute. The learned Additional Government Pleader would submit that because of the criminal case pending against the petitioner, the amount of



10% of Provident Fund is withheld. The non-grant of encashment of leave and retention of 10% of Provident Fund are illegal, in view of the Judgment rendered in W.P(MD)No.1484 of 2016.

9. Therefore, in view of the Judgment rendered in W.P(MD) No.1484 of 2016, dated 29.01.2016, the respondents are directed to disburse the 10% of the provident fund amount and encashment of earned leave salary to the petitioner, within a period of eight weeks, from the date of receipt of a copy of this order.

10. With the above direction, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

smn

To

1. The Principal Secretary to Government,
Home (Police XVII) Department,
Fort St. George, Chennai - 600 009.

2. The Director,
Fire and Rescue Department,
Chennai.

+1cc to Mr.S.Chellapandian, Advocate Sr.No. 67892

JAM/07.12.16/SS 2/3p-4c

ORDER MADE IN
W.P(MD) No.21465 of 2016
10.11.2016