IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
and
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.71 of 2017
and
C.M.P.Nos.1184, 3024 and 14811 of 2017

The Secretary to Government,
Handlooms, Handicrafts,
Textiles and Khadi Department,
Secretariat, Chennai - 600 009. ... Appellant/Respondent

.. Vs ..

G.Devadhas,
Under Secretary to Government,
(Under Suspension)
Handlooms, Handicrafts,
Textiles and Khadi Department,
Secretariat, Chennai - 600 009.... Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 23.09.2016 passed by this Court in W.P.No.26386 of 2016.

Prayer in WP.NO.26386/2016: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 quash the same and consequently 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 Appellant : Mr.Venkataramani,
Additional Advocate General
Assisted by Mr.R.Prathap Kumar
Additional Government Pleader

For Respondent : Mr.T.Ranganathan

JUDGMENT

(Judgment of the Court was delivered by
HULUVADI G.RAMESH,J.,)

Challenging the correctness of the order dated 23.09.2016 passed by the learned Single Judge in W.P.No.26386 of 2016, the State has preferred this writ appeal.

2. The respondent has filed the above W.P.No.26386 of 2016 for a writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the appellant 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 appellant to sanction Special Provident Fund and Encashment of Earned Leave/Private Affairs due to the respondent as on the date of his superannuation on 30.06.2012, within a reasonable period.

3.1. The case of the respondent is that he 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 appellant's department and continued as Under Secretary to Government till the date of his superannuation on 30.06.2012.

3.2. During the year 2008, the respondent was placed under suspension in connection with the allotment of plots to the members in the Okkiyam Thoraipakkam Housing Scheme, Kancheepuram District, as he was the Vice President of the Tamil Nadu Secretariat Employees Co-operative Housing Society. In view of the said pending departmental proceedings, the Government has not permitted the respondent to retire from service on 30.06.2012 on attaining the age of superannuation.

3.3. The respondent has been denied all the terminal benefits. However, he has been paid subsistence allowance upto 30.06.2012 and subsequently, only provisional pension from 01.07.2012.

3.4. While so, on attaining the age of superannuation on 30.06.2012, without prejudice to the orders of the appellant not permitting the respondent to retire from service, the respondent has 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.

3.5. In view of the said representation, the appellant has sanctioned his General Provident Fund alone. Thereafter, the respondent 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. But the appellant has passed the impugned order dated 01.03.2016 rejecting the request of the respondent. As against the said impugned order, the respondent has filed the above writ petition before the learned single Judge and the learned single Judge, on consideration of the materials placed before the Court, had allowed the said writ petition and set aside the impugned order and directed the appellant to pay the Special Provident Fund and Encashment of Earned Leave/Private Affairs to the respondent 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 that order. Challenging the said order, the State has preferred the present writ appeal.

4. Heard the learned Additional Advocate General appearing for the appellant and the learned counsel appearing for the respondent.

5. It appears that while the respondent was in service as Under Secretary to Government, due to certain irregularities committed by him, he was kept under suspension and subsistence allowance has been paid to him. In the meanwhile, the respondent retired from service on 30.06.2012 and thereafter, in view of the departmental proceedings, provisional pension alone was paid to him from 01.07.2012. In view of non-payment of General Provident Fund, Special Provident Fund and Encashment of Earned Leave/Private Affairs, the respondent has sent a representation requesting to pay the same and the said representation was rejected by the department. Challenging the same, the respondent came up before this Court by filing the above writ petition and the said writ petition was allowed by the learned single Judge. Aggrieved over the said order, the State has preferred the present writ appeal.

6. Learned counsel appearing for the respondent has relied on a decision of the Jharkand High Court reported in 2007 (2) BLJR 2847 [Dr.Dudh Nath Pandey Vs. The State of Jharkhand], wherein, it is held that the Government has no power to withhold Gratuity and pension during the pendency of the departmental proceeding or criminal proceeding. It is further held that it does not give any power to withhold Leave Encashment at any stage either prior to the proceeding or after conclusion of the proceeding.

7. As far as the case in hand is concerned, only subsistence allowance has been paid to the respondent till 30.06.2012 and subsequently, provisional pension has been paid from 01.07.2012. In view of the above referred decision, we are of the view that the disciplinary proceedings initiated against the respondent may continue. However, since the appellant has got no power to withhold General Provident Fund,

Special Provident Fund and Encashment of Earned Leave/Private Affairs, the appellant is directed to settle the same to the respondent, within a period of two months from the date of receipt of copy of this judgment.

8. With the above direction, the writ appeal is disposed of. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Jrl

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

+1cc to Mr.T.Ranganathan, Advocate Sr.No.81042/17
+1cc to Government Pleader SR.No.80941/17

AK(CO)
sm:22.1.2017

W.A.No.71 of 2017