

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.26710 of 2014 and
M.P.Nos.1 and 2 of 2014

J.Venugopal

... Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Fort St.George,
Chennai 600 009.

2.The Commissioner,
Chennai City Municipal Corporation,
Chennai 600 003.

3.The Superintending Engineer (Works)
Chennai City Municipal Corporation,
Chennai 600 003.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the third respondent in Na.Ka.No.A3/2621/2014 dated 19.08.2014 and quash the same and consequently to direct the second respondent to sanction and release the General Provident Fund, Special Provident Fund and Encashment of Earned Leave at the credit of the petitioner on 30.06.2014, along with interest from 01.07.2014 as admissible under the rules.

For Petitioner : Mr.T.Ranganathan

For Respondents : Mr.G.Anantha Rangan
Standing Counsel

O R D E R

Heard Mr.T.Ranganathan, learned counsel appearing for the petitioner and Mr.G.Anantha Rangan, learned Standing Counsel appearing for the respondents.

2.The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to

call for the records relating to the impugned order issued by the third respondent in Na.Ka.No.A3/2621/2014 dated 19.08.2014 and quash the same and consequently to direct the second respondent to sanction and release the General Provident Fund, Special Provident Fund and Encashment of Earned Leave at the credit of the petitioner on 30.06.2014, along with interest from 01.07.2014 as admissible under the rules."

3. The case of the petitioner is as follows:

The petitioner was working as Assistant Engineer in the second respondent Corporation since 1979. He was promoted as Assistant Executive Engineer in 1989 and Executive Engineer in 2002 and once again promoted as Zonal Officer in 2007. The petitioner was further promoted to the post of Superintendent Engineer on 01.03.2013.

4. While working as Superintendent Engineer, the petitioner was placed under suspension on 28.06.2014, when he was due for retirement on 30.06.2014. The suspension order was issued pending contemplation of disciplinary action against him. The petitioner after being placed under suspension was not allowed to retire and he still under suspension.

5. While so, the petitioner submitted his representation to the respondents to sanction his personal service benefits like General Provident Fund, Special Provident Fund and Encashment of Earned Leave to his credit as on 30.06.2014, as there was no impediment for such sanction under Rule 9(1) and 9(2) of the Tamil Nadu Pension Rules. As per the rules, only the amount towards DCRG can be withheld when disciplinary action was pending against the employee concerned.

6. According to the petitioner, no matter whatever happens to the disciplinary action, the amount which are due against the General Provident Fund, Special Provident Fund and Encashment of Earned Leave cannot be withheld or forfeited. In the circumstances, the petitioner had submitted his representation for sanction of those amounts. However without considering the representation of the petitioner which was submitted on 30.06.2014, the third respondent without proper application of mind, rejected the same vide proceedings dated 19.08.2014, stating that the petitioner was not entitled to the benefits as claimed in the representation since he was placed under suspension pending disciplinary action. The said proceeding is impugned in the present writ petition.

7. The learned counsel appearing for the petitioner would submit that the issue raised in the writ petition is squarely covered by the decision rendered by this Court in W.P.No.9519 of 2012 dated 04.07.2012. According to him, an identical

issue came up for consideration before this Court and the learned Judge has passed an order, directing the payment of benefits due to the employee. The operative portion of the order passed by the learned Judge in the aforesaid writ petition dated 04.07.2012, in paragraph 3 and 4 are extracted below,

"3. Pending writ petition, the petitioner has filed an additional affidavit dated 19.06.2012, stating that the respondent has not sanctioned GPF, Special Provident Fund and Encashment of Earned Leave even though she retired on attaining the age of superannuation on 30.09.2011. Therefore, the petitioner prayed for a direction to the respondents to settle the amount payable to her in respect of General Provident Fund, Special Provident Fund and Encashment of earned leave to her credit and also for a direction to the respondents to complete the departmental proceedings initiated against her within a specified period. The said statement made in the additional affidavit in para 4 is recorded.

4. In view of the filing of the additional affidavit by the petitioner and having regard to the fact that Special Provident Fund, General Provident Fund and Encashment of earned leave cannot be withheld by the respondents even if she is dismissed from service after conclusion of the departmental proceedings, this writ petition is disposed of with a direction to the respondents to pay the petitioner the amount payable to her in respect of General Provident Fund, Special Provident Fund and Encashment of earned leave to her credit within a period of four weeks from the date of receipt of a copy of this order. The respondents are also directed to complete the disciplinary proceedings initiated against the petitioner and pass final orders in accordance with law, within a period of six months from the date of receipt of a copy of this order."

8. The learned counsel would further submit that following the said decision, another learned Judge of this Court has passed a similar orders in W.P.No.12513 of 2013, dated 17.11.2016. In view of the same, he would impress upon this Court to pass similar direction and no prejudice would be caused to the respondents if such direction is issued for the payment.

9. Upon notice, the learned standing counsel entered appearance and filed a detailed counter affidavit. He would submit that since the disciplinary action was pending against the petitioner and the petitioner was not allowed to retire, the retirement benefits which was due to him have been withheld.

10. This Court has taken note of the submissions and is of the considered view that the issue is squarely covered by the decision of this Court in W.P.No.9519 of 2012, dated 04.07.2012, the operative portion of the order passed by this Court which is extracted above is squarely covered the issue raised in the present writ petition also. Therefore, there is every justification for seeking such prayer in the present writ petition for granting such direction as above. The respondents cannot have any objection for sanction of release of the amount as prayed for, since no prejudice would be caused regardless of the outcome of the disciplinary action pending against the petitioner.

11. In view of the same, the impugned order dated 19.08.2014, passed in proceedings No.A3/2621/2014 is set aside and there shall be a consequential direction to the respondents to sanction the release of General Provident Fund, Special Provident Fund and Encashment of Earned Leave standing due to the petitioner as on 30.06.2014, as admissible to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

12. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

gsk

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Fort St.George,
Chennai 600 009.

2.The Commissioner,
Chennai City Municipal Corporation,
Chennai 600 003.

3.The Superintending Engineer (Works)
Chennai City Municipal Corporation,
Chennai 600 003.

+1cc to M/s T.Ranganathan, Advocate Sr.66072
+1cc to M/S G.Anantharangan, Advocate Sr.65373

W.P.No.26710 of 2014

SR(CO)

rvr 13/10/2017



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