



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2017

CORAM :

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Writ Petition (MD) No.5748 of 2014
and
M.P(MD)No.1 of 2014

S.Chandra

... Petitioner

Vs.

1. Union of India Rep by
Chief Post Master General,
Tamil Nadu Circle,
Chennai 600 002.

2. The Director of Postal Services,
The Postmaster General,
Southern Region (TN),
Madurai 625 002.

... Respondents

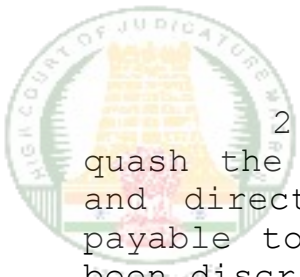
Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order passed in O.A No. 964/2009 dated 24.06.2010 by the Central Administrative Tribunal Madras Bench confirming the order of 1st respondent in NO. VIG/MISC/08 dated 23.07.2009 withholding the petitioner's retirement gratuity and cash equivalent of leave salary and quash the same and consequently direct the respondents to disburse the petitioner's retirement gratuity and leave encashment salary within the time fixed by this Court.

For Petitioner : Mr.H.Arumugam
For Respondents : Mr.P.Subbiah
Standing Counsel

ORDER

(Order of the Court was made by T.S.SIVAGNANAM,J)

This writ petition has been filed challenging the order passed by the Central Administrative Tribunal.



2.The petitioner has approached the Tribunal praying to quash the order dated 23.07.2009 issued by the first respondent and direct the first respondent to sanction terminal benefits payable to the petitioner on the ground that the petitioner has been discriminated in withholding her terminal benefits.

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3.The petitioner entered in the service of the Postal Department on 21.11.1967 and retired from service on superannuation on 31.05.2008. At the relevant time, she was working as Postal Assistant in Ettayapuram Sub Post Office. The Ettayapuram Panchayat union had a savings bank account in the said post office in which a transaction of deposit of Rs.1,57,267.40 and another transaction of withdrawal of Rs.1,55,647/- took place on 20.09.1995. The police authorities are said to have detected false entries made in the said post office records in respect of the aforesaid two transactions for which criminal cases were filed against one S.Sankaran, the then Sub Postmaster of Ettayapuram Post Office and the petitioner in Crime No.2/99 for the alleged offence under Sections 409, 467, 468, 471, 477(A) IPC and 13 (2) r/w 13 (1)(c) and (d) of Prevention of Corruption Act, 1988.

4.Though the petitioner was allowed to retire, she has not been paid gratuity nor leave salary. The petitioner would contend that there is absolutely no justification in retaining gratuity amount or the cash equivalent of the leave salary, apart from the action being discriminatory because no action has been initiated against the then Sub Postmaster. The explanation given for the plea of discrimination is that the Department was not aware of the fact that the criminal case was registered against the Sub Postmaster, Sankaran when he retired from service and only when sanction was sought for to prosecute the petitioner, the Department came to know about it. In our considered view, this can hardly be a reason to withhold the gratuity or leave salary.

5.So far as the leave salary is concerned, the same can be withheld in terms of Rule 39(3) of CCS Leave Rules, 1972 only if the Department comes to the conclusion that some money would be recoverable from the employee, on conclusion of all the proceedings against him/her. Admittedly, there is no such proceedings nor any claim for recovery of money against the petitioner. Therefore, the retention of the monetary equivalent of the leave salary is unsustainable.

6.So far as the withholding of the gratuity is concerned, though it is pointed out by the learned counsel for the respondent Department by referring to Rule 69(1)(c), in our considered view, when there are two accused in a criminal case, as against one person the Department did not initiate any action and released all the terminal benefits and therefore, there should not be any discrimination on the said aspect. Furthermore, withholding of gratuity could have been done, if there is a financial loss and



admittedly, no financial loss has been put forth by the respondent Department on account of the alleged conduct of the petitioner.

7. For all the foregoing reasons, we are inclined to interfere with the order passed by the Central Administrative Tribunal. Accordingly, the impugned order is set aside. Consequently, the order passed by the first respondent dated 23.07.2009 is also set aside and the respondent Department is directed to release the gratuity as well as the equivalent of the leave and enhancement of salary which would in no manner prejudice the criminal case which has been registered against the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

8. The writ petition is allowed accordingly. No costs. Consequently, M.P(MD)No.1 of 2014 is closed.

Sd/-
Assistant Registrar (C)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Post Master General,
Union of India,
Tamil Nadu Circle,
Chennai 600 002.
2. The Director of Postal Services,
The Postmaster General,
Southern Region (TN),
Madurai 625 002.

+ 1 CC TO Mr.H.ARUMUGAM, ADVOCATE IN SR No. 51829
+ 1 CC TO Mr.P.SUBBIAH, ADVOCATE IN SR No. 53855

SMS

TE/RSK/SAR-II : 27/04/2017 : 3P/5C

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