



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.09.2017
CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

WEB COPY

W.P. (MD) Nos.17227 of 2017

S.Messiah

:Petitioner

Vs.

1. The Secretary to Government,
Revenue Department,
Secretariat,
Chennai - 600 009.

2. The District Collector,
Madurai District,
Madurai.

:Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the first and second respondents ie., the Secretary to the Government, Revenue Department, Chennai and the District Collector, Madurai to pass appropriate orders on the petitioner's representation dated 30.05.2017 based on the earlier orders of this Court in W.P.(MD) No.16098 of 2015 dated 08.06.2015,, W.P.(MD)No.1484 of 2016 dated 29.01.2016 and in W.P.(MD)No.11791 of 2017 dated 27.06.2017 within a specified time frame that may be fixed by this Court.

For Petitioner

: Mr.S.Visvalingam

For Respondents

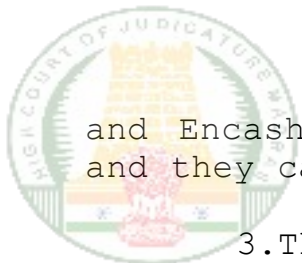
: Mr.R.Karthikeyan

Additional Government Pleader

O R D E R

By consent of both parties, the writ petition itself is taken up for final disposal.

2.The present writ petition has been filed seeking a Writ of Mandamus, directing the first and second respondents ie., the Secretary to the Government, Revenue Department, Chennai and the District Collector, Madurai to pass appropriate orders on the petitioner's representation dated 30.05.2017, based on the earlier orders of this Court in W.P.(MD)No.16098 of 2015 dated 08.06.2015,, W.P.(MD)No.1484 of 2016 dated 29.01.2016 and in W.P. (MD)No.11791 of 2017 dated 27.06.2017, in which it has been held that the claim of General Provident Fund, Special Provident Fund



and Encashment of Leave Salary are properties of the petitioner and they cannot be denied to the petitioner.

3.The petitioner, who was serving as a Forest Settlement Officer in the cadre of Tahsildar in the Revenue Department was not permitted to retire from service and hence he was placed under suspension, in view of the pendency of a criminal case against him. Subsequently, the Commissioner of Revenue Administration, Chennai vide his proceedings in R.O.C.No.D2/19961/96 dated 31.01.1997, removed the petitioner from service. However, the General Provident Fund amount and the Encashment of Leave Salary have not been paid to the petitioner, till date. The petitioner had also given a representation on 30.05.2017, seeking the respondent to disburse the General Provident Fund amount and the Encashment of Leave Salary. Since, the respondents have not considered the said representation, the petitioner has come to this Court with the present writ petition.

4.The learned counsel for the petitioner referring to an order dated **29.01.2016** made in **W.P. (MD) Nos.1484 of 2016**, submitted that on the date of reaching superannuation, earn leave encashment benefit and the special Provident Fund dues from the employers shall be paid, irrespective of the fact whether departmental proceedings or criminal case pending against the employee. The issue raised in the present writ petition is no longer res integra. This court, while relying upon the judgment of the full bench of the Punjab and Haryana High Court has held that earn leave encashment, Special Provident Fund and General Provident Fund shall be paid and the same cannot be withheld by the respondents even if the employee is dismissed from service after conclusion of the departmental proceedings. At this stage, it is relevant to extract paragraph 10 of the judgment which reads as follows:

"11.Hence, I am of the view that the impugned order, dated 07.09.2015 passed by the second respondent, is liable to be interfered with. Further, while following the aforesaid judgment of the Full Bench Judgment of the Punjab and Haryanan High Court and also the order dated 04.07.2012 in W.P.No.9519 of 2012, I have held as follows in paragraph No.10 of the order dated 17.09.2014 in W.P. (MD)No.7986 of 2013:

10.The learned counsel for the petitioner relied on a judgment of this Court in W.P. (MD)No.9519 of 2012 dated 04.07.2012 to contend that even in the case of dismissal, Earned Leave Encashment cannot be denied, since it was only the wages that are payable to the petitioner. The following passage may be usefully extracted below:



"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."

5. The learned counsel for the petitioner also placed reliance on the judgments of this Court in W.P.(MD)No.16098 of 2015 dated 08.06.2015 and W.P.(MD)No.11791 of 2017 dated 27.06.2017.

6. In the light of the above observations, the respondents are hereby directed to consider the representation of the petitioner dated 30.05.2017, within a period of four weeks from the date of receipt of a copy of this order.

7. The writ petition is disposed of with the above direction. No Costs.

Sd/-

Assistant Registrar (Crl Side)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Revenue Department,
Secretariat,
Chennai - 600 009.

2. The District Collector,
Madurai District,
Madurai.

+ 1 CC TO MR.S.Visvalingam, ADVOCATE IN SR No.78399
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 78798
mr/mrn
MK/MR KKR/SAR-1/3P/5C/22.09.2017

W.P. (MD)No.17227 of 2017

13.09.2017