

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Review Application No.220 of 2018
in
Writ Appeal No.71 of 2017

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

.. Applicant/Appellant

-vs-

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

.. Respondent/Respondent

Review Application under Order 47 Rule 1 read with Section 114 of Code of Civil Procedure, 1908, to review the judgment dated 14.11.2017 made in W.A.No.71 of 2017, which was filed against the order dated 23.09.2016 passed in W.P.No.26386 of 2016.

W.A.No.71 of 2017:-

Writ Appeal filed under clause 15 of Letters patent, against the order dated 23.09.2016 passed by this court in WP.No.26386 of 2016.

W.P.No.26386 of 2016:-

Writ Petition 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 Applicant : Mr.A.Zakir Hussain,
Government Advocate

For Respondent : Mr.T.Ranganathan

ORDER

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

Heard Mr.A.Zakir Hussain, learned Government advocate for the applicant; and Mr.T.Ranganathan, learned counsel for the respondent.

2.This review application has been filed to review the judgment and order dated 14.11.2017, passed in Writ Appeal No.71 of 2017.

3.The review applicant was the appellant in the said writ appeal. The applicant is aggrieved by the direction issued in paragraph 7 of the judgment and order dated 14.11.2017, which reads as follows:-

"7. As far as the case in hand is concerned, the 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 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."

4.It is the submission of the learned Government Advocate that the Special Provident Fund and encashment of Earned Leave/Private Affairs, etc., cannot be sanctioned to the respondent/writ petitioner, since the respondent/writ petitioner has not been permitted to retire and has been retained in service and disciplinary proceedings are invoked. In this regard, the learned counsel referred to the Special Rules for

the Tamil Nadu General Service, more particularly, Rule 2(b) as well as the instructions issued by the Government in Letter No.61612/FR.III/90-1, dated 17.09.1990.

5.It is the submission of the learned Government Advocate that the instruction issued by the Government permits encashment of Earned Leave only after finalization of the disciplinary proceedings and regularization of the suspension period, and this has not been done in the respondent/writ petitioner's case, the direction cannot be implemented.

6.We have heard the learned counsel for the respondent on the above submission.

7.A Division Bench of this Court in the case of The Secretary to Government, Higher Education Department vs. Dr.K.Sundaramoorthy in W.A.No.1485 of 2018 considered a similar issue and issued directions to the Government to disburse the encashment of Earned Leave on Private Affairs and the personal contribution made by the respondent therein to the Special Provident Fund. In the said judgment dated 31.07.2018, the Division Bench referred to the judgment in W.A.No.71 of 2017, dated 14.11.2017, which is subject matter of this review application. The Government filed appeal before the Hon'ble Supreme Court in Civil Appeal No.11710 of 2018, dated 30.11.2018, and the Hon'ble Supreme Court did not interfere with the direction issued by the Division Bench, but directed disciplinary proceedings to be concluded within three months' and the amount representing encashment of Earned Leave to be released to the respondent therein with two weeks' thereafter. The application filed by the State Government for extension of time was dismissed by the Hon'ble Supreme Court on 22.04.2019, and it is brought to the notice of this Court by the learned for the respondent/writ petitioner that pursuant to the orders passed by the Hon'ble Supreme Court, Dr.K.Sundaramoorthy has been paid the benefits. Furthermore, there are several decisions wherein, identical orders have been passed more particularly, in W.A.No.1700 of 2015 dated 18.01.2016 wherein, identical objection raised was considered by the Division Bench and was rejected.

8.In the light of the above, the applicant has not made out any ground to review the judgment and order passed by the Division Bench.

9.Thus, for the above reasons, this review application fails and the same is dismissed. The applicant is directed to settle the entire benefits as directed by the Division Bench in Writ Appeal No.71 of 2017 within a period of four weeks' from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

abr

To

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

+1cc to Mr.T.Ranganathan, Advocate, S.R.No.68723

Rev.Appl.No.220 of 2018
in W.A.No.71 of 2017

AD(CO)
CS/24/10/2019