

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 31.07.2018
CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.1485 of 2018
and
C.M.P.No.11735 of 2018

- 1.The Secretary to Government,
Higher Education Department,
Secretariat, Chennai-600 009.
- 2.The Commissioner of Technical Education,
Directorate of Technical Education,
Guindy, Chennai-25. ... Appellants/Respondents

-vs-

Dr.K.Sundaramoorthy ... Respondent/Petitioner

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.16882 of 2017 dated 21.11.2017.

W.P.No.16882 of 2017:-

Petition filed under article 226 of the Constitution of India to issue of writ of certiorarified mandamus to call for the records relating to the impugned order of the 2nd respondent issued in Letter No.10502/D1/2016 dated 24.04.2017 and quash the same, consequently direct the 2nd respondent to sanction and disburse the special provident fund, encashment of earned leave and private affiars at the credit of the petitioner as on 31.05.2016, within a reasonable period.

For Appellants :: Mr.C.Munusamy,
Special Government Pleader
For Respondent :: Mr.T.Ranganathan

JUDGMENT
(Delivered by HULUVADI G.RAMESH, J.)

The respondent herein was initially appointed as Lecturer in Central Polytechnic at Tharamani on 03.01.1983. Subsequently, he was promoted as Head of the Department(Electronics) with effect from 01.03.1991 and further promoted to the post of Principal of Government Polytechnic College at Purasawalkam,

Chennai. The respondent was promoted as Additional Director of Technical Education(Polytechnics) in the Directorate of Technical Education and thereafter, he attained the age of superannuation on 31.05.2016. On account of certain allegations, he was placed under suspension by order in G.O.(2D).No.41, Higher Education Department, dated 26.05.2016 and his services were retained under Rule 56(1)(c) of the Fundamental Rules. Thus, the respondent herein / writ petitioner was not allowed to retire from service. By order dated 24.04.2017, the request of the respondent for payment of encashment of Earned Leave / Private Affairs has been rejected. Under these circumstances, he filed a writ petition before this Court in W.P.No.16882 of 2017 seeking to quash the order dated 24.04.2017 and for a direction to disburse the General Provident Fund, Special Provident Fund and Encashment of Earned Leave on Private Affairs, to him.

2.Relying upon an order passed by this Court under similar circumstances in W.P.No.139 of 2016 dated 22.08.2017, the learned single Judge directed the authorities to disburse the Encashment of Earned Leave on Private Affairs and the personal contribution made by the respondent herein to the Special Provident Fund, within a period of twelve weeks, by order dated 21.11.2017.

3.Challenging the order passed in the writ petition, the present writ appeal has been preferred by the Department.

4.The learned counsel appearing for the appellants-Department has submitted that the learned single Judge ought not to have allowed the writ petition without considering the provisions of the Fundamental Rules and Tamil Nadu Leave Rules which are applicable to the Government servants including the respondent. He also submitted that the learned single Judge has failed to distinguish the respondent herein and the petitioner in W.P.No.15457 of 2015, which has been mentioned in the order relied upon by the learned single Judge in W.P.No.139 of 2016 dated 22.08.2017. Stating so, the learned counsel prayed for setting aside the order passed by the learned single Judge.

5.The learned counsel for the respondent has submitted that the learned single Judge has considered the matter in proper perspective and has passed the impugned order and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel on either side and perused the materials available on record.

7.It appears that this Court has passed an order on 22.08.2017 in W.P.No.139 of 2016, wherein, under similar

circumstances, a direction was issued to the authorities to disburse the personal contribution of the writ petitioner therein, including Provident Fund, Special Provident Fund, Encashment of Earned Leave and Encashment of Unearned Leave within a specified time frame. Relying upon the said order, the learned single Judge has passed the impugned order granting such relief to the respondent herein.

8. In this connection, it would be appropriate to refer to the decision passed by this Court in W.A.No.71 of 2017 dated 14.11.2017. In that case, due to certain irregularities in the allotment of plots, the respondent therein was kept under suspension. He has been denied all the terminal benefits. However, he was paid only subsistence allowance upto 30.06.2012 and subsequently, only provisional pension was paid. Thereafter, the authorities have sanctioned only the General Provident Fund. The request for sanction of Special Provident Fund and Encashment of Earned Leave / Private Affairs at his credit, were rejected. The learned counsel appearing for the respondent therein relied upon the decision of the Jharkhand High Court in 2007(2) BLJR 2847 (Dr.Dudh Nath Pandey v. The State of Jharkhand), wherein it has been held that the Government has no power to withhold gratuity and pension during the pendency of the departmental proceeding or criminal proceeding. It has also been 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. Relying upon the said decision, this Court ordered to settle the General Provident Fund, Special Provident Fund and Encashment of Earned Leave / Private Affairs, within a period of two months.

9. We have no second opinion over the above settled position of law.

10. Hence, the impugned order passed by the learned single Judge is confirmed and the writ appeal stands dismissed. The appellants are directed to disburse the Encashment of Earned Leave on Private Affairs and the personal contribution made by the respondent herein to the Special Provident Fund, within a period of two months from the date of receipt of a copy of this judgment. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

KM

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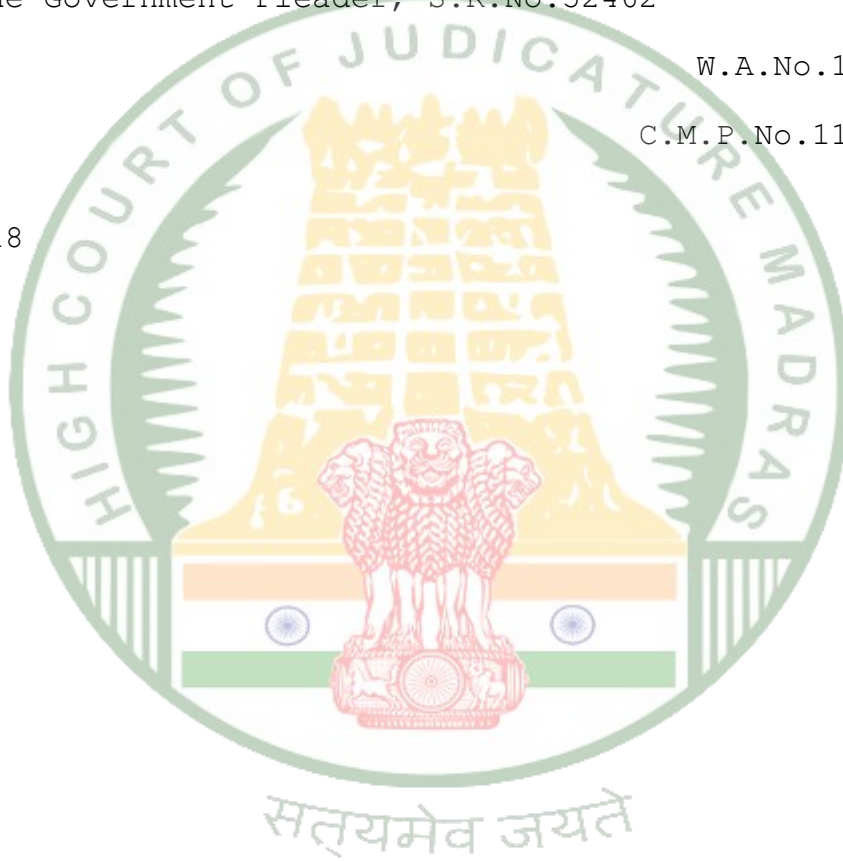
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+1cc to Mr.T.Ranganathan , Advocate, S.R.No.51687

+1cc to the Government Pleader, S.R.No.52462

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and
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