

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.1550 of 2018
and C.M.P.No.12559 of 2018

- 1.The Commissioner,
now Greater Corporation of Chennai,
Ripon Buildings,
Chennai-600 003.
- 2.The Superintending Engineer (Works),
Chennai City Municipal Corporation,
Chennai-600 003. Appellants/Respondents 2 & 3

-vs-

- 1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St.George,
Chennai-600 009.1st Respondent/1st Respondent
- 2.J.Venugopal2nd Respondent/Petitioner

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.26710 of 2014 dated 08.09.2017.

WP.No.26710 of 2014:Writ 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 3rd Respondent in Naka No. A3/2621/2014 dated 19.08.2014 and quash the same and consequently to direct the 2nd Respondent to sanction and release the General Provident Fund Special Provident Fund and Encashment of Earned Leave at the credit of the Petitioner on 30.6.2014 along with interest from 01.07.2014 as admissible under the Rules.

For Appellant ::Ms.Karthikaa Ashok

For Respondents::Mr.P.S.Sivashanmugasundaram,
Spl.GP for R1
Mr.T.Ranganathan for R2

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

The second respondent was working as Assistant Engineer in the Chennai City Municipal Corporation, Chennai, from the year 1979. He was promoted as Assistant Executive Engineer in 1989 and Executive Engineer in 2002 and once again promoted as Zonal Officer in 2007. He was further promoted to the post of Superintendent Engineer on 01.03.2013. While working as Superintendent Engineer, the second respondent 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 second respondent, after being placed under suspension was not allowed to retire. While so, the second respondent submitted his representation to the authorities to sanction his 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 is pending against the employee concerned. In the circumstances, the second respondent had submitted his representation for sanction of those amounts. However the same was rejected vide proceedings dated 19.08.2014, stating that he is not entitled to the benefits as claimed in the representation, since he was placed under suspension pending disciplinary action.

2. With the above background, the second respondent has filed a writ petition before this Court in W.P.No.26710 of 2014, praying for a direction to release the General Provident Fund, Special Provident Fund and Encashment of Earned Leave as on 30.06.2014, along with interest from 01.07.2014, as admissible under the Rules.

3. The learned single Judge has allowed the writ petition by order dated 08.09.2017. Challenging the order passed by the learned single Judge, the present writ appeal has been filed by the Corporation.

4. The learned counsel for the appellant-Corporation has submitted that the audit objections to the tune of Rs.7,84,00,294/- had arisen between the years 2006 to 2010, ie., during the period the second respondent had worked in the capacity of Superintending Engineer in the appellant Corporation and in view of the non-settlement of the objections by the second respondent, charge memo was issued to him and his terminal benefits and DCRG were withheld by the appellant-Corporation, as he is the person responsible for the same. She further submitted that the action of the Corporation withholding the benefits, is in accordance with law and hence the order passed by the learned single Judge has to be set aside.

5.The learned counsel for the second respondent has submitted that the learned single Judge has considered the matter in proper perspective and has passed the impugned order allowing the claim of the second respondent, in the light of the decision rendered by this Court in W.P.No.9519 of 2012 dated 04.07.2012 and hence the same does not require any interference.

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

7.The appellant has filed this appeal stating that the action of the Corporation withholding the General Provident Fund, Special Provident Fund and Encashment of Earned Leave / Private Affairs, in respect of the second respondent, is in accordance with law and hence the order passed by the learned single Judge has to be set aside. In this connection, the learned counsel for the second respondent has also relied upon a decision of this Court, which has been passed under similar circumstances, in W.A.No.71 of 2017 dated 14.11.2017, in which this Court, relied upon the decision of the Jharkhand High Court in the case of Dr.Dudh Nath Pandey v. The State of Jharkhand, reported in 2007 (2) BLJR 2487, 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 and 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 so, this Court held that the appellant therein has got no power to withhold the General Provident Fund, Special Provident Fund and Encashment of Earned Leave / Private Affairs, and accordingly directed to settle the same to the respondent therein, within a specified time frame.

8.We are not inclined to interfere with the above settled position of law.

9.In view of the above settled legal position, the impugned order passed by the learned single Judge does not require any interference and accordingly the same is confirmed and the writ appeal stands dismissed. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KM

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To

1.The Commissioner,
Greater Corporation of Chennai,
Ripon Buildings,
Chennai-600 003.

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

3.The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Fort St.George, Chennai-600 009.

+lcc to Mr.T.Ranganathan, Advocate SR.NO.56351
+lcc to M/s.Karthikaa Ashok, Advocate SR.NO.56509

SSV(CO)
sm:19.9.2018

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