

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 03.09.2018
CORAM
THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI
W.P.No.22249 of 2018

G.Namachivayam ... Petitioner

Versus

1. The State of Tamil Nadu,
represented by the Principal Secretary to Government,
Municipal Administration & Water Supply Department,
Secretariat, Chennai 600 009.

2. The Commissioner of Municipal Administration,
Chepauk, Chennai □ 600 005.

3. The Commissioner,
Vaniyambadi Municipality,
Vaniyambadi, Vellore District.

4. The Principal Accountant General (A & E)
Teynampet, Tamil Nadu,
Chennai 600 018 ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified Mandamus to call for the records of the 3rd respondent relating to the order in proceedings in Na.Ka.No.883/2010/C1 dated 02.05.2018 to quash the same and to issue consequential direction to the respondents to forthwith sanction and disburse special provident fund, encashment of earned leave and unearned leave and petitioner's contribution to General Provident Fund and Special Provident Fund with interest on delay of the payment of the petitioner herein within a stipulated time.

For Petitioner : Mr.M.Ravi

For Respondents : Mrs. Thanga Vadhana Balakrishnan
Additional Government Pleader
for R1 and R2
Mr.M.Ezhumalai, Government Advocate
for R3

O R D E R

This writ petition has been filed by the petitioner seeking for a certiorarified Mandamus to call for the records of the 3rd respondent relating to the order in proceedings in Na.Ka.No.883/2010/C1 dated 02.05.2018 to quash the same and to issue consequential direction to the respondents disburse special provident fund, encashment of earned leave and unearned leave and petitioner's contribution to General Provident Fund and Special Provident Fund with interest on delay of the payment of the petitioner within a stipulated time period.

2. The petitioner would state that he was appointed as Town Planning Inspector in the year 1995 and later promoted as Town Planning Officer on 17.11.2004. While he was discharging his duties as Town Planning Officer in the year, he was implicated in a criminal case and got suspended from service on 21.01.2011. The learned counsel appearing for the petitioner would further submit that the petitioner was not allowed to retire from service, though he attained superannuation on 10.01.2017 and no retirement benefits, has also been disbursed in this regard to him, though, he submitted a representation on 26.08.2017 to the respondents 1 & 2. Since no response is forthcoming, the petitioner came forward to file this writ petition.

3. The grievance of the petitioner is that though he was not allowed to retire as he was under the suspension, but having attained superannuation, he is entitled for the encashment of Earned and Unearned Leave on Private Affairs, notwithstanding the pendency of such disciplinary proceedings against him. Hence, this Court may direct the respondents to disburse the said benefits, more so, in view of the fact that this Court, in similar facts and circumstances, vide order dated 21.07.2015 made in WP No.21750 of 2017 in the case of [T.L.Nageswara Rao V. The District Collector, Thiruvallur], has held as follows :-

□4. No doubt, the terminal benefits, such as GPF, SPF, encashment of Earned and un-earned leave are the properties of the petitioner and the same cannot be withheld by the State. Even assuming that he is dismissed from service, he is entitled to receive the same. In these circumstances, I am inclined to issue a direction to the respondent as prayed for.

5. In the result, this writ petition is disposed of with a direction to the respondent to disburse the General Provident Fund, his contribution to Special Provident Fund, encashment of earned leave and encashment of unearned leave on private affairs payable to the petitioner within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected MP is closed□.

4. The learned counsel appearing for the respondents would submit that if the above cited order squarely covers the case of the petitioner herein, the authority will do the needful, if directed in this regard.

5. It appears in this case the petitioner has challenged the impugned order in Na.Ka.No.883/2010/C1 dated 02.05.2018 rejecting the release of retirement benefit, in view of pendency of the criminal prosecution against him. Though, he has reached the age of superannuation, inasmuch as, he was not allowed to retire for the same. No doubt the petitioner is not entitled to pension and gratuity, if he is not allowed to retire for his being prosecuted in criminal case but the same cannot be a ground for not releasing the contribution made towards General Provident Fund, Special Provident Fund and also the amount due owing to encashment of earned and unearned leave on private affairs. The said decision covers the case of the petitioner is not disputed by the learned counsel appearing for the respondents. Therefore, this Court dispose of this writ petition notwithstanding the fact that the petitioner is not entitled to all the retirement benefit but he is entitled to the aforesaid retiral benefit even if he has not been allowed to retire for pendency of the criminal prosecution on his attaining the age of superannuation. Hence, this Court directs the respondents to disburse the aforesaid retirement benefits i.e the amount contributed by him towards General Provident Fund, Special Provident Fund so also, the encashment of Earned leave and unearned leave on private affairs within a period of eight weeks from the date of receipt of copy of this order.

6. With the aforesaid observation, this writ petition stands disposed of. No costs.

03.09.2018

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To

1. The State of Tamil Nadu,
represented by the Principal Secretary to Government,
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Secretariat, Chennai 600 009.

2. The Commissioner of Municipal Administration,
Chepauk, Chennai □ 600 005.

3. The Commissioner,
Vaniyambadi Municipality,
Vaniyambadi, Vellore District.

4. The Principal Accountant General (A & E)
Teynampet, Tamil Nadu,
Chennai 600 018

SATRUGHANA PUJAHARI, J.,
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