

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.07.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.28283 of 2017
& WMP.No.30401 of 2017

S.T.Rajendran

..Petitioner

Versus

The Revenue Divisional Officer,
Ponneri, Tiruvallur District

..Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order passed by the respondent in his proceedings Na.Ka.5397/2010/B1 dated 21.09.2017 and quash the same and consequently direct the respondent to disburse the Gratuity, Special Provident Fund, Encashment of Earned Leave and Encashment of Un-earned Leave on private affairs to the petitioner.

For Petitioner : Mr.G.Prakasam

For Respondent : Mr.V.Kathirvelu, Spl G.P.

ORDER

The petitioner has filed this writ petition challenging the order of the respondent dated 21.09.2017, rejecting his representation made for release the General Provident Fund, Special Provident Fund, reimbursement of the amount of earned leave and unearned leave including Gratuity, notwithstanding the pendency of the criminal prosecution initiated against him by the Commercial Crime Investigation Wing C.I.D., Tiruvallur under Sections 408, 409, 420, 467, 477(A) read with Section 34 IPC as well as the disciplinary proceeding grounded on the same facts involved in the criminal case.

2. It appears that the petitioner while working as Village Administrative Officer at Elavur Village under Gommidipoondi Taluk, Tiruvallur District alleged to have issued spurious chitta to some of the persons who utilised the same to obtain agricultural loan from Vishnuvakkam Primary Agricultural Cooperative Credit Society and the same resulted in irregularities of sanction of loans by the society

concerned and consequently loss to the society. As such, the employees of the society including the petitioner were indicated in such case for commission of aforesaid offences. The petitioner thereafter, was put under suspension before his superannuation and not allowed to retire. However, the petitioner came to challenge the non release of the amount that is SPF, GPF, Gratuity and amount due on account of the encashment of earned leave and unearned leave on private affairs vide W.P.No.10357 of 2017 before this Court, which was disposed of, vide order dated 25.04.2017, with the direction to the petitioner to make a representation to the respondent concerned and directed to dispose of such representation in accordance with law. The petitioner accordingly made a representation but the same came to be rejected by the order dated 21.09.2017 impugned in this writ petition assigning the reasons of pendency of the criminal proceeding as well as the disciplinary proceeding for which, the petitioner was not allowed to retire. The same being illegal and arbitrary being contrary to law as laid down in W.P.No.15457 of 2015, which was confirmed in W.A.No. 207 of 2016, disposed of on 26.02.2016 and also the Apex Court inasmuch as no interference in the SLP filed was made. As such being unsustainable in law be quashed and consequently, a direction be given to release the aforesaid entitlement of the petitioner notwithstanding the fact that he was not allowed to retire on account of the pendency of the aforesaid proceedings.

3. Counter affidavit has been filed by the respondents justifying the impugned order. According to the respondent since the petitioner has been indicted in a criminal case along with others for misappropriation of funds of the co-operative society to the tune of Rs.15,01,397/- so also the petitioner has obtained loan from the Tirvallur District Government Servants and the Aided School Servants Cooperative Society, Tiruvallur obtaining certificate from the respondent employer to effect the recovery of the same from the petitioner's salary and dues, and as such in the event the aforesaid amount is allowed to be released in favour of the petitioner, the recovery of such loan shall become impossible, hence his representation was devoid of merit. Therefore, the writ petition challenging the impugned order is liable to be dismissed.

4. I have heard the counsel for the petitioner as well as the counsel for the respondents.

5. According to the learned counsel for the petitioner, notwithstanding the involvement of the petitioner in a criminal case as well as the disciplinary proceeding for which, he is not allowed to retire from service even if he attained the age of superannuation, he is entitled to the GPF and the Special PF amount contributed by him and also encashment of earned leave and unearned leave on private affairs as held by this Court in W.P.No.15457 of 2015 i.e., in

the case of P.K.Panchakshram Vs. Tamil Nadu Generation and Electricity Distribution Corporation Ltd. Represented by its the Chairman cum Managing Director and others inasmuch as the same was confirmed in W.A.No.207 of 2016 by Division Bench of this Court and the SLP(C).No.016229 of 2016 filed against the said order before the Apex Court was also dismissed. The learned counsel for the petitioner, therefore, submits that the order passed in the aforesaid W.P. No.15457 of 2015, which has been confirmed by the Division Bench in W.A.No.207 of 2016 therefore being binding precedent, this Court taking note of the same, should quash the impugned order and direct the disbursement of the amount due to the petitioner.

6. Per contra, counsel appearing for the respondents submits that since the petitioner has been involved in a criminal case of misappropriation and also the employer is duty bound to make payment to the society from the due of the petitioner the loan which he had taken in view of the certification of the employer standing as a guarantor, the prayer made by the petitioner is devoid of merit.

7. To appreciate the contention raised it would be apposite to have a look in the W.P.No.15457 of 2015 on 02.06.2015 filed by the petitioner P.K.Panchaksharam, an employee of the TANGEDCO. This Court in paragraph 7 of the said order have held as follows.

"7. In view of the same, a direction is issued to the respondents to disburse Encashment of Earned Leave and Encashment of Unearned Leave on Private Affairs. As far as Special Provident Fund is concerned, the respondents are directed to refund the same, if there is any contribution made by the petitioner. If petitioner has contributed towards other terminal benefits, the extent to the contribution made by the petitioner shall also be paid. The respondents are directed to disburse the aforesaid amount, within a period of six weeks from the date of receipt of a copy of this Order. The Writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed."

An Appeal carried by the respondent employer against the said order to a Division Bench of this Court vide W.A.No.207 of 2016 was disposed of being ordered as follows.

" 4. The learned Single Judge, considering all aspects of the matter, held that the petitioner was having earned leave and unearned leave on private affairs before initiation of the case and as such, he is entitled to encashment of earned leave and unearned leave on private affairs. The claim of gratuity was given up by the employee / writ petitioner on the ground that in the event of conviction and dismissal of service, the writ petitioner may not be entitled to get gratuity. The special provident fund was also not

granted as the writ petitioner failed to establish any contribution made by him. While disposing of the writ petition, a direction was made to the appellants herein to disburse encashment of earned leave and encashment of unearned leave on private affairs. In respect of special provident fund, it was held that if any contribution was made by the writ petitioner, the same can be paid to the petitioner.

5. We do not find any error, illegality or infirmity in the order sought to be impugned in this writ appeal preferred by the Tamil Nadu Generation and Electricity Distribution Corporation Ltd., warranting interference. Thus, the writ appeal stands dismissed. No costs. Consequently connected miscellaneous petition stands closed."

The SLP(C).No.016229 taken to the Supreme Court against the same by the employer was also dismissed.

8. Considering the aforesaid, this Court is of the view that notwithstanding the pendency of the criminal prosecution as well as the disciplinary proceeding, the petitioner is entitled to the encashment of earned leave and unearned leave on private affairs accrued to him before his suspension as well as the contribution made by him to the General Provident Fund and Special Provident Fund. Hence, such rejection of prayer to release such entitlement cannot be sustained on the grounds of pendency of criminal case as well as disciplinary proceeding on a charge of misconduct. However, so far as gratuity is concerned, since the petitioner is not allowed to retire and he is indicted in a criminal case on the aforesaid charges, his claim for gratuity therefore appears to this Court at this stage to be without any substance. As far as the ground that since the petitioner had also availed loan on the certificate of the respondent employer to recover the same from the pay and dues of the petitioner and appropriate the amount to the lender co-operative society, this Court is of the view that if such an agreement is there, it goes without saying that employer can recover the amount from the aforesaid and appropriate the same to the co-operative society concerned. However, the same cannot be treated as a mandate of this Court to authorise the employer to deduct the loan amount from the aforesaid entitlement and appropriate the same to the debtor cooperative society, if the employer is not otherwise, legally entitled to recover the same.

9. I would therefore, allow this writ petition in part and consequently quash the impugned order with regard to rejection of the prayer for release of general provident fund, special provident fund and encashment of earned leave and unearned leave on private affairs and direct the respondent to release the amount contributed by the petitioner for the general provident fund and the special provident fund with accrued interest and encashed amount of earned leave and unearned leave on private affairs, but giving liberty to the

respondent employer concerned to deduct the amount to which it is legally entitled to, within six weeks from the date of receipt of a copy of this Order.

10. With the aforesaid order, this writ petition stands disposed of. Consequently, connected miscellaneous petition is closed. However, in the circumstances there shall be no order as to costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

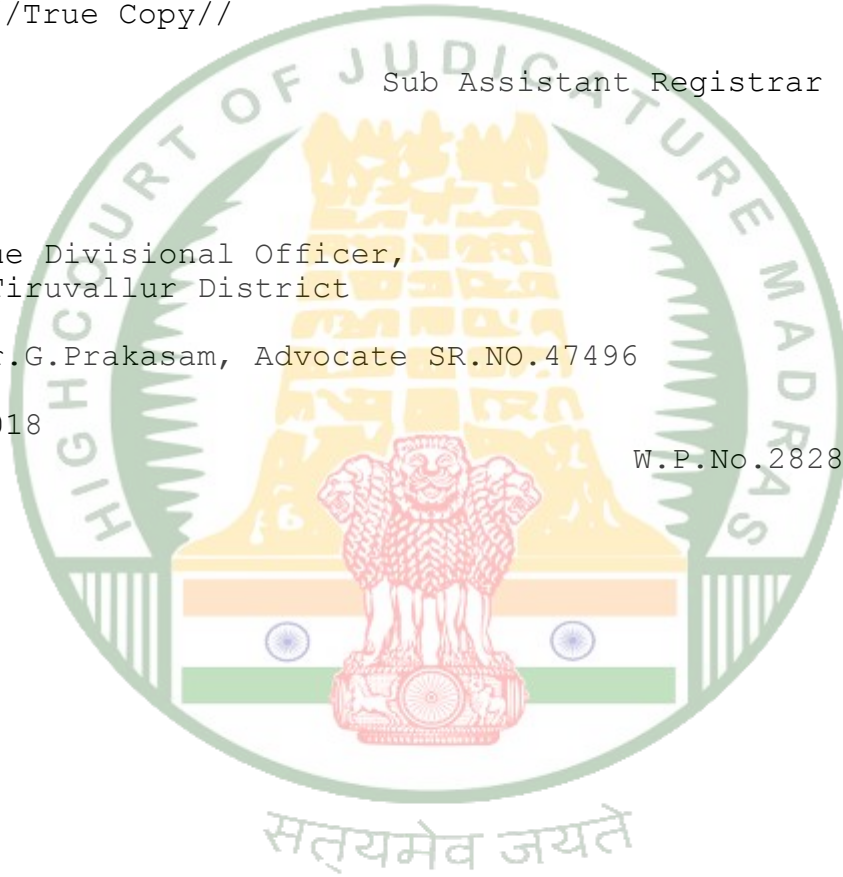
dn/lok

To
The Revenue Divisional Officer,
Ponneri, Tiruvallur District

+1cc to Mr.G.Prakasam, Advocate SR.NO.47496

sm:31.8.2018

W.P.No.28283 of 2017



WEB COPY