

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.1838 of 2018 and WMP.No.2285/2018

J.Fernandez

...Petitioner

Versus

1. The Commissioner of Technical Education,
Guindy, Chennai-25.

2. The Secretary to Government,
Higher Education Department,
Secretariat, Chennai-9.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to consider the representations submitted by the petitioner on 3.7.2017 and 8.1.2018 for sanction and release of the Special Provident Fund, Encashment of Earned Leave and Private Affairs at the credit of the petitioner as on the date of retirement, namely, 31.3.2010 in the light of the orders of this Court in W.P.No.16882/2016 dated 21.11.2017 against the same 1st respondent, within a reasonable period fixed by this Court.

For Petitioner : Mr.T.Ranganathan

For Respondents : Mrs.P.Rajalakshmi,
Addl. Govt. Pleader

ORDER

The Writ Petition is filed seeking to issue a Writ of Mandamus, directing the 1st respondent to consider the representations submitted by the petitioner on 3.7.2017 and 8.1.2018 for sanction and release of the Special Provident Fund, Encashment of Earned Leave and Private Affairs at the credit of the petitioner as on the date of his retirement, namely, 31.3.2010, in the light of the orders of this Court in W.P.No.16882/2016 dated 21.11.2017 against the same 1st respondent, within a reasonable period fixed by this Court.

2. Learned Counsel for the petitioner submitted that the petitioner was initially appointed as Instructor (Mechanical) in the year 1979 in Government Polytechnic at Nagercoil and thereafter posted at Madurai in the year 1984. After getting promotion at various levels, during the year 2006, he was promoted as Head of the Department and transferred to Nagercoil and he was also placed in charge of the Principal and thereafter, he was posted at Ettayapuram Government Polytechnic College for Women as Head of the Department/Principal-in-charge

during 2010 and retired on 31.3.2010 on attaining the age of superannuation.

3. The learned Counsel for the petitioner further submitted that in the meanwhile, the 1st respondent issued a Memorandum dated 24.3.2009, calling for the explanation on the violation made by one Thiru L.John Louis, Lecturer (Civil Engineering), when he was serving as Continuing Education Manager at Government Polytechnic, Nagercoil. Though the petitioner has submitted his explanation on 30.6.2009, the 1st respondent issued a Memorandum dated 10.3.2010 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 by framing three charges. The petitioner has also submitted his detailed explanation on 23.3.2010. Thereafter, the 2nd respondent has also issued orders in G.O.(1D) No.73, Higher Education (I2) Department, dated 31.3.2010 thereby allowing the petitioner to retire from service on attaining the age of superannuation on 31.3.2010 A.N. without prejudice to the disciplinary action pending against him.

4. The learned Counsel also submitted that thereafter an enquiry officer was appointed and after completion of the enquiry, the Enquiry Officer has also submitted his report during 2010 itself. But no final orders have been passed by the 2nd respondent till date. It is further submitted that after the retirement of the petitioner, on 31.3.2010, the 1st respondent has released only his General Provident Fund amount. But so far, the Special Provident Fund and Encashment of Earned Leave/Private Affairs at his credit as on 31.3.2010 have not been sanctioned. The learned Counsel for the petitioner also submitted that since the wife of the petitioner has undergone a major surgery and taking further treatment which is evident by the Certificate given by Professor S.Raja Sundaram, MS, DNB, M.Ch., FAIS, FAMS, Director-Global Institute of Oncology, Head-Surgical Oncology, Convenor-South Global Oncology, the petitioner is in need of money and therefore, he has sought for disbursement of the above said benefits as it is legally permissible.

5. Mrs.P.Rajalakshmi, learned Additional Government Pleader who takes notice for the respondents 1 and 2 sought time to take instructions in this matter.

6. However, a Government Servant, though he is facing departmental proceedings, he is entitled to receive the amount contributed by him in respect of Special Provident Fund and also entitled for Encashment of Earned Leave/Private Affairs on his credit. The said issue has already been decided by this Court in W.P.No.15457/2015 dated 02.06.2015 which was confirmed by a Division Bench of this Court in W.A.No.207 of 2016 dated 26.02.2016. In this regard, it is relevant to extract paragraphs 4 and 5 hereunder:

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 the 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 Limited warranting interference. Thus, the Writ Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition stands closed.'

7. Following the same, the respondents are directed to disburse the amount contributed by the petitioner towards Special Provident Fund and the amount towards Encashment of Earned Leave and Unearned Leave on Private Affairs, within a period of four weeks from the date of receipt of a copy of this Order.

7. The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Technical Education,
Guindy, Chennai-25.
2. The Secretary to Government,
Higher Education Department,
Secretariat, Chennai-9.

+lcc to Mr.T.Ranganathan, Advocate Sr.No.6688

+lcc to Government Pleader Sr.No.7474,7440

sm:15.2.2018

W.P.No.1838 of 2018