

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2655 of 2018
and
C.M.P.No.21702 of 2018

1.The Secretary to the Government,
Municipal Administration and Water
Supply (ME2) Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2.The Commissioner of Municipal
Administration and Water
Supply Department, Chepauk,
Chennai - 600 005.

... Appellants

vs.

P.Elangovan

... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order made in W.P.No.17069 of 2015, dated 16.06.2015.

Prayer in W.P.No.17069 of 2015:Petition filed under Article 226
of the Constitution of India for the issuance of Writ of
Mandamus directing the respondents to disburse the Gratuity
Special Provident Fund Encashment of Earned Leave and
Encashment of Unearned Leave on private affairs to the
petitioner.

For Appellants : Mr.R.Udayakumar
Additional Government Pleader.

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR, J)

Instant writ appeal is filed against the order of the writ
court dated 16.06.2015 made in W.P.No.17069 of 2015, by which
the writ court, taking note of the fact the criminal case

registered against the respondent, ended in acquittal and if the fact that the respondent was not allowed to retire under Rule 56 (1)(c) of the Fundamental Rules, by observing that though the respondent herein, even if ultimately retired from services, would be entitled to GPF, Special Provident Fund, Earned Leave Encashment Benefit, and directed the appellants herein, to settle the same, within a period of four weeks from the date of receipt of a copy of the order.

2. Material on record discloses that in the Special Case No.11 of 2016, filed against the respondent herein, vide judgment dated 02.11.2015, the learned Special Judge and Chief Judicial Magistrate, Thiruvallur, has acquitted him, on the ground that the prosecution has not proved the case. In W.P.No.17069 of 2015, dated 16.06.2015, Writ Court has ordered as hereunder:-

"3. However, when the matter is taken up for hearing, the learned counsel for the petitioner has fairly submitted that the petitioner does not press his claim for DCRG and Unearned Leave on private affairs, since he could not get the same, if he is dismissed from service ultimately.

4. However, the learned counsel for the petitioner submitted that even if the petitioner is ultimately dismissed from service, the petitioner is entitled to GPF, his contribution to Special Provident Fund and Earned Leave Encashment benefits.

5. I am in agreement with the submission made by the learned counsel for the petitioner. Hence, a direction is issued to the respondents to settle the GPF, petitioner's contribution to Special Provident Fund and Earned Leave Encashment benefits to him, if not already paid, within a period of four weeks from the date of receipt of a copy of this order.

6. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is also closed."

3. Order made by the Writ Court, is assailed on the following grounds:-

"1. The learned Judge has failed to note that the respondent was served as Executive Engineer (M&EC) at Commissionerate of Municipal Administration only on deputation basis and as per the Government Order No.409, Finance (Pension) Department, dated 31.07.2004, the following categories of employees were eligible to be sanctioned encashment of E.L. and U.E.L on Private Affairs:-

- a. those retiring on medical invalidation
- b. those retrenched from Government Service.
- c. those permitted to retire from service without prejudice to the disciplinary proceedings pending against them.
- d. to those going on voluntary retirement and
- e. those sent on compulsory retirement.

2. Writ Court has failed to note from the above that it is clearly mentioned that those employees who have retired from the service shall be entitled for all terminal benefits including his savings. In this circumstances, the encashment of leaves and other benefits to the respondent cannot be granted.

3. Writ Court has failed to note the charges framed against the petitioner are not finalized and disciplinary case is still pending, if at all the leave period including the period of suspension has to be regularized by the Government of finalization of the pending disciplinary case, the leave accounts to be reckon from the Earn Leave etc., further subsistence allowance is being sanctioned to the petitioner.

4. Writ Court has failed to neither examined the above said instruction of finance department nor given a opportunity to file a affidavit to discuss the points. The writ petitioner cannot be sanctioned Encashment of Earned Leave/UEL of Private Affairs etc which will create bad precedent on the other employees which will derail the system of administration.

Therefore, based on the gravity of the charges and if such major penalty imposed on the respondent will cause hardship to the Government the disciplinary case (Vigilance Case) is still pending as against the respondent and after the finalization, he shall entitled to get the benefits."

4. Respondent has been acquitted of the criminal case. Departmental proceedings initiated has not been concluded. Provident fund, General Provident Fund, are the savings of the writ petitioner, in other words deferred payments.

5. Though, Mr.R.Udayakumar, learned Additional Government Pleader made submission in support of the grounds, we are not inclined to interfere, in the light of judgment of the Full Bench of this Court in C.Mathesu vs. The Secretary to

Government, Revenue Department, Chennai, reported in (2013) 3 CTC 369 (Mad) (FB).

6. In C.Mathesu vs. The Secretary to Government, Revenue Department, Chennai, reported in (2013) 3 CTC 369 (Mad) (FB), the Hon'ble Full Bench of this Court at paragraph 28 of the judgment, held thus:-

"28. From the aforesaid discussion, the following broad principles emerge :

(xv) If a Government servant has been placed under suspension and not permitted to retire even after his attaining the age of superannuation in terms of Rule 56 (1)(c) of the Fundamental Rules, the enquiry against him can proceed, and in that case, if charges of misconduct are proved, depending upon the nature of the charges, even the extreme penalty of dismissal or removal from service can be imposed.

(xvi) If there is any statutory provision for continuing the departmental proceedings like Rule 9(2) of the Pension Rules even after the Government servant has retired on attaining the age of superannuation, then the departmental proceedings already instituted before the retirement of the Government servant can be continued against the delinquent employee by treating him to be in service.

(xvii) If the Government servant has retired on attaining the age of superannuation and subsequently any departmental proceeding is to be instituted against him, in that event, under Rule 9(2)(b) of the Pension Rules, sanction of the Government is required to be taken and the event in respect of which the departmental proceedings are sought to be initiated should not have taken place more than four years before such institution.

(xviii) In cases where the Government Servant is allowed to retire on attaining the age of superannuation or where the departmental proceedings are to be initiated after the retirement, there is no question of passing the order of dismissal or removal from service and only the pension can be withheld, withdrawn or reduced. The question of dismissal or removal of the said delinquent employee from service, therefore, does not arise.

(xix) Since in the present case, the appellant was permitted to retire on attaining the age of superannuation without prejudice to the disciplinary proceedings pending against him, in our considered opinion, the said proceedings can be permitted to be

continued in terms of Rule 9(2)(b) of the Pension Rules."

7. Further, the reasons assigned by the writ court, is in accordance with law. No interference is called for. Hence, Writ Appeal is dismissed. No Costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

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Supply (ME2) Department,
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