

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.20026 of 2016

D.Sripathy

.. Petitioner

-vs-

The General Manager
Vellore-Thiruvannamalai District

Cooperative Milk Producers Union Ltd.,
Sathuvachari, Vellore-9

... Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondent to disburse the petitioner's retirement benefits like Gratuity, Encashment of Earned Leave and Encashment of Un-earned Leave on private affairs to the petitioner within stipulated time, as fixed by this Hon'ble Court.

For Petitioner :: Mr.C.Prakasam

For Respondent :: Mr.R.Balaramesh
Special Government Pleader

ORDER

Mr.D.Sripathy, who was serving as Extension Assistant Grade-II in the year 1983, got promotion as Extension Assistant Grade-I in the year 1991 and after receiving the Selection Grade scale was further promoted as Manager in the Vellore-Thiruvannamalai District Cooperative Milk Producers Union Limited, Vellore. Although the petitioner was suspended from service on 14.6.2014, he was subsequently reinstated on 15.12.2015. However, on his further suspension, one another order was also passed not permitting him to retire from service. Under this background, the claim of the petitioner is that, merely on the ground that surcharge proceedings are initiated against the petitioner, the respondents cannot refuse to release the proceeds of gratuity, encashment of earned leave and encashment of unearned leave on private affairs to the petitioner.

2. A counter affidavit has been filed by the respondent. The learned Special Government Pleader for the respondent submitted that the respondent Cooperative Union had settled the EPF amount

of Rs.8,21,000/- on 12.6.2015 to the petitioner and only due to the pendency of the criminal case registered against him in respect of the allegation of misappropriation, the gratuity amount has not been paid.

3. But the counter affidavit does not mention whether the proceeds of encashment of earned leave and encashment of unearned leave on private affairs were paid to the petitioner. Therefore, as the petitioner is entitled to the same, irrespective of the fact whether he is facing any surcharge proceeding or criminal case, in the light of the order passed by the Division Bench in W.A.No.207 of 2016 dated 26.2.2016 (The Chairman cum Managing Director, TANGEDCO and two others v. P.K.Panchaksharam), affirming the order of the learned Judge holding 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 from 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.",

the respondent is hereby directed to disburse the proceeds of encashment of earned leave and encashment of unearned leave on private affairs, if not paid already, to the petitioner within a period of two weeks from the date of receipt of a copy of this order. To this extent, the writ petition stands allowed. Consequently, W.M.P.No.17260 of 2016 is closed. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

ss
To

1. The General Manager
Vellore-Thiruvannamalai District
Cooperative Milk Producers Union Ltd.,
Sathuvachari, Vellore-9

+1 CC to Mr.R.Balaramesh, Advocate sr 6562.
+1 CC to Mr.C.Prakasam, Advocate sr 6159

W.P.No.20026 of 2016

SVI (CO)
SP(15/02/2019)



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