IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.24921 of 2019
and W.M.P.No.24521 of 2019

K.Nagarasu ..Petitioner

vs

1.The Government of Tamil Nadu
Rep. by its Secretary
Co-operation Food and Consumer
Protection Department
Fort St. George
Chennai-9.

2.The Registrar of Co-Operative Societies (Housing)
Tamil Nadu Co-op. Housing Federation Campus
Second Floor, No.48
Ritherdon Road
Veppery, Chennai-7.

3.The Registrar Co-operative Societies
Kilpauk, Chennai-10. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in Na.Ka.No.923/2017/A1, dated 29.03.2019, quash the same and consequently, direct the respondents to forthwith pay the encashment of earned leave and unearned leave on private affairs and special provident fund.

For Petitioner : Mr.N.Kolandaivelu

For Respondents: Mr.L.P.Shanmugasundaram
Special Government Pleader (Co-op.)

O R D E R

Writ Petition is filed challenging the order of the 2nd respondent dated 29.03.2019 in Na.Ka.No.923/2017/A1 and consequently, directing the respondents to forthwith pay the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

encashment of earned leave and unearned leave on private affairs and special provident fund.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

3.The case of the petitioner is that the petitioner was appointed as Senior Inspector in the year 1979. Thereafter, the petitioner was promoted as Co-operative Sub-Registrar in the year 1993 and further promoted as Deputy Registrar on 14.07.2007. While the petitioner was working as Deputy Registrar of Co-operative (Housing), Coimbtaore, he was placed under suspension on 22.10.2009 by the 1st respondent. Following the suspension order, the petitioner was not permitted to retire from service on 31.01.2017 by invoking Section 56(1)(c) of the Fundamental Rules on the ground that the criminal case against the petitioner and charge memo are pending. Thereafter, the petitioner made representation to the 3rd respondent on 20.11.2018 seeking (1) Gratuity (2) Encashment of earned leave and unearned leave on private affairs, and (3) Special Provident Fund. However, petitioner's representation was rejected by the 2nd respondent on 29.03.2019 on the ground that the charge memo and criminal case are pending. Once again, the petitioner has made representations to the respondents on 02.04.2019 and 20.04.2019, the same were pending till date and not considered by the respondents. Hence, the present writ petition.

4. Learned counsel for the petitioner submitted that the issue involved in the present case is squarely covered by the judgment of the Division Bench of this Court dated 18.01.2016 made in W.A.No.1700 of 2015 (The Joint Registrar of Co-operative Societies and another vs. R.Chithravelu).

5. Learned counsel for the respondents has not disputed the facts submitted by the learned counsel for the petitioner.

6. The issue involved in the present case is whether the employee is entitled to the amounts so collected from his salary during his service and credited to his General Provident Fund account, Special Provident Fund account and his Earned Leave and Leave Earned on private affairs amounts, pending enquiry. On perusal of the above said judgment of the Full Bench of this Court, it reveals that the said decision squarely covers this issue and the relevant paragraphs are extracted hereunder:

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"4. The Writ Court after considering the respective submissions and placing reliance on a Full Bench judgment of the Punjab and Haryana High Court, directed the Official Respondents to disburse him the said amounts as under:

"According to the petitioner, he is entitled to receive these items even if he is ultimately dismissed from service. I am in agreement with the submission of the learned counsel for the petitioner. It is useful to refer to a Full Bench judgment of the Punjab and Haryana High Court dated 9.11.2012 in Letters Patent Appeal No.113 of 2012 in Punjab State Civil Supplies Corporation Ltd., and others vs. Pyare Lal. The relevant portions are extracted hereunder:

"10. .. .. ..

Before we go into the legal sanctity of the Circular, it must be remembered that the Leave Encashment is paid on account of unutilised leave and therefore, it partakes the character of salary.

12.We are, therefore, in agreement with the view taken by the Division Bench of this Court in B.S.Gupta vs. Uttar Haryana Bijli Vitran Nigam Limited and others (2006 (8) SLR 690) holding that amount of leave encashment is payable to the retiring employee notwithstanding the pendency of the departmental enquiry or criminal proceedings. "

I am of the view that the same principle would apply in the case of payment of General Provident Fund and contribution of the Government employee to Special Provident Fund also.

Hence, a direction is issued to the first respondent to settle the General Provident Fund, contribution of the petitioner to Special Provident Fund and Earned Leave Encashment, within a period of six weeks from the date of receipt of a copy of this order.

.. ..

.. ..

9. In this respect the Writ Court has rightly placed its reliance on the Full Bench judgment of the Punjab and Haryana High Court in Punjab State Civil Supplies Corporation Ltd., and others vs. Pyare Lal (LPA No.113 of 2012 dated 09.11.2012)."

7. In the light of the above said judgment, I am inclined to allow this writ petition. Accordingly, the writ petition stands allowed and impugned order of the 2nd respondent dated 29.03.2019 is hereby quashed. This Court directs the respondents

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

to pay the encashment of earned leave and unearned leave on private affairs and special provident fund, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

kj

To

1.The Government of Tamil Nadu
Rep. by its Secretary
Co-operation Food and Consumer
Protection Department
Fort St. George
Chennai-9.

2.The Registrar of Co-Operative Societies (Housing)
Tamil Nadu Co-op. Housing Federation Campus
Second Floor, No.48
Ritherdon Road
Veppery, Chennai-7.

3.The Registrar Co-operative Societies
Kilpauk, Chennai-10.

+1cc to Mr.N.Kolandaivelu, Advocate SR.No.79402

+1cc to Special Government Pleader (Co-op) SR.No.79665

W.P.No.24921 of 2019
and W.M.P.No.24521 of 2019

SVI(CO)
GMY(17/10/2019)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/