

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.11.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.31922 of 2019

1 R.DHANAMANI ... Petitioner

Vs

1 The Secretary to Government
Rural Development Department
Secretariat , Chennai 600 009.

2 The Director of Rural Development
and Panchayatraj Department,
Panagal Building,
Saidapet, Chennai 600 015.

3 The District Collector
Salem District Salem. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue appropriate Writs, Orders or Directions and in particular issue a Writ in the nature of MANDAMUS, Directing the respondents to sanction earned leave and unearned leave to her credit in accordance with fundamental rule viz 86 (a) (i) (ii) (iii) to the petitioner.

For Petitioners : Mr.V.Suthakar

For Respondents : Mr.R.S.Selvam

Government Advocate

O R D E R

1. The relief sought for the writ petitioner is that a direction to the respondents to sanction earned leave and unearned leave to her credit in accordance with fundamental rule viz 86 (a) (i) (ii) (iii) to the petitioner.

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

- 3.The case of the petitioners is that the petitioner was working as Block Development Officer, Pethanickenpalayam Block, Salem District and she attained the age of superannuation on 30.04.2013. However, she was not allowed to retire from service on the ground that disciplinary proceedings contemplated under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules are pending. According to the petitioner, since she was not allowed to retire from service at the age of superannuation, she is entitled to receive the earned leave of 240 days as well as unearned leave which is to her credit as well as gratuity. Therefore, she made a representation on 16.08.2019 to the District Collector, Salem, requesting to grant the above said benefits to her. The District Collector in turn has forwarded the representation of the petitioner to the second respondent herein. The grievance of the petitioner is that till date the respondents have not passed any order, granting any earned leave and unearned leave to her credit and gratuity as per the fundamental rule viz., 86(a) (i) (iii).
- 4.The learned counsel appearing for the petitioner would submit that though the petitioner who attained the age of superannuation, she was not permitted to retire from service, in view of the disciplinary proceedings pending against her. He would submit that the earned leave salary and gratuity are the property of the petitioner over which the department cannot stay any claim. According to him, these are the benefits which are already occurred and accumulated and the amount of the petitioner which she is entitled to get attaining the age of superannuation. He would further submit that even assuming that the disciplinary proceedings would result in initiating adverse orders against the petitioner, still she is entitled to get these benefits.
- 5.The learned Government Advocate appearing for the respondents would submit that the petitioner is not entitled for encashment of earned leave and unearned leave as well as gratuity since disciplinary proceedings initiated against her are pending and she is entitled only after finalization of the said disciplinary proceeding.
- 6.Insofar as getting the benefits of encashment of Leave Salary and Provident Fund is concerned, number of judgments have been passed by this Court and the learned counsel has relied upon the recent order of this Court made in W.P.(MD)No.4975 of 2018 dated 08.03.2018, where a learned Judge of this Court has held as follows:
- "5.This Court has held on more than one occasion, these benefits could not be denied to the person, even if he is ultimately dismissed from

service. Hence, a direction is issued to the first respondent to consider the petitioner's representation dated 05.02.2018 regarding the disbursement of general provident fund, special provident fund and earned leave encasement and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order."

7. Following the said order, this Court has also considered a similar case in W.P.(MD)No.7174 of 2018 and passed an order dated 03.04.2018. The relevant portion of the said order would run thus:

"8. The respondents shall consider the request of the petitioner dated 07.01.2018 with regard to the sanction and disbursement of General Provident Fund, Special Provident Fund as well as the Encashment of Earned Leave of the petitioner and pass orders thereon, on merits and in accordance with law, especially, in the light of the aforesaid judgments cited herein, within a period of 6 weeks from the date of receipt of a copy of this order."

8. I have heard the learned Government Advocate appearing for the respondents, who may not dispute the legal position as set out above in a number of judgments of this Court.

9. In view of the above, this writ petition is disposed of with the following direction:

"The petitioner shall be entitled to claim the encashment of Earned leave, Unearned Leave as well as gratuity and therefore the respondents are directed to disburse the same within a period of twelve weeks from the date of receipt of a copy of this order."

10. With this direction, this writ petition is disposed of. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

jrs

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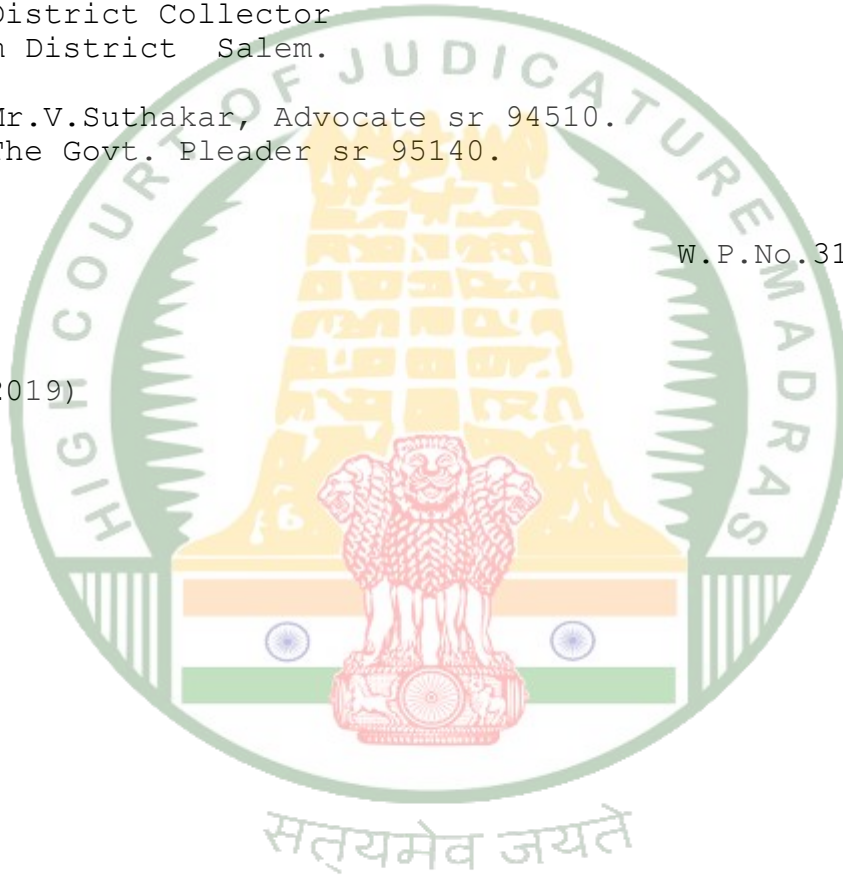
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+1 CC to Mr.V.Suthakar, Advocate sr 94510.

+1 CC to The Govt. Pleader sr 95140.

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GP(CO)
SP(19/12/2019)



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