

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.31356 of 2019

P.Madheswaran

... Petitioner

Vs.

The Sub Collector,
Namakkal,
Namakkal District.

.... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent to disburse the Gratuity, Increment, Subsistence Allowance, General Provident Fund, Special Provident Fund, Encashment of Earned Leave and Encashment of unearned Leave on private affairs to the petitioner.

For Petitioner : Mr.K.Sathish Kumar

For Respondent : Mr.R.S.Selvam
Government Advocate

ORDER

This writ petition is filed seeking direction to the respondent to disburse the Gratuity, Increment, Subsistence Allowance, General Provident Fund, Special Provident Fund, Encashment of Earned Leave and Encashment of unearned Leave on private affairs to the petitioner.

2.By consent of both parties, this writ petition is taken up for final disposal.

3.The petitioner joined service on 14.02.2009 as Village Administrative Officer (VAO) at Pottireddipatti Revenue Village, Namakkal Taluk and District, by the proceedings issued by the Revenue Divisional Officer, Namakkal Division, Namakkal District and he is still working there. Vide proceedings dated 20.11.2009, the petitioner was given additional charge of Village Administrative Officer of Thoosur Village. On 29.02.2012, the petitioner was given a transfer order, transferring the petitioner from Pottireddipatti

Revenue Village to Namakkal Revenue Village and as per the order, the petitioner joined at the transferred place on 01.03.2012. While the petitioner was working there, based on a complaint given by a third party, the Vigilance and Anti-corruption police arrested the petitioner on 15.02.2013 and remanded him to judicial custody. Thereafter, the petitioner was placed under suspension by order dated 18.02.2013 by invoking Rule 17(e)(2) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules.

4. Since no further progress in the trap case filed against the petitioner, the petitioner filed a Writ Petition in W.P.No.21067 of 2013 and by order dated 14.08.2013, this Court passed an interim order for reinstating the petitioner. As per the order of this Court, the petitioner was reinstated in service on 01.04.2014 in Alathur Village, Kollimalai Taluk, Namakkal District. The petitioner was again suspended from service on the date of his retirement i.e., on 29.04.2014 and not allowed to retire from service. Due to the suspension, the benefits of Gratuity, increment, subsistence allowances, GPF, SPF, Encashment of Earned Leave and Encashment of unearned leave on Private Affairs were not paid to the petitioner.

5. It is contended by the learned counsel for the petitioner that pendency of the departmental as well as criminal proceedings cannot be a bar for disbursing the above monetary benefits to the petitioner. In support of the above contention, the learned counsel for the petitioner, relied on a decision made in the Division Bench of this Court in W.A.No.207 of 2016 dated 26.02.2016, wherein at paragraph Nos.4 and 5, it is observed 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 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 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 Ltd., warranting interference. Thus, the writ appeal stands dismissed. No costs. Consequently connected miscellaneous petition stands closed."

6.The learned counsel further submitted that the said order of the Division Bench was put to challenge before the Apex Court, which in turn, dismissed the SLP on 06.07.2017. He has produced a copy of the said order as well.

7.Perusal of the said order of the Division Bench, which was not interfered by the Apex Court, would show that the petitioner is entitled to get the disbursement of encashment of earned leave, encashment of un-earned leave on private affairs and the special provident fund, if any contribution was paid by the respective petitioners towards the said fund.

8.Accordingly, the respondent is directed to consider the claim of the petitioner to disburse the encashment of earned leave and encashment of un-earned leave on private affairs. In respect of the special provident fund, if the petitioner has made any contribution, the same shall also be paid to the petitioner. The said exercise shall be done by the respondents within a period of twelve weeks from the date of receipt of a copy of this order.

9.With the above direction, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

pnn

To

The Sub Collector,
Namakkal,
Namakkal District.

+1cc to Mr.K.Sathish Kumar, Advocate SR.92880
+1cc to the Government Pleader SR.93037

W.P.No.31356 of 2019

CB(05/12/2019)