

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.33252 of 2019

S.Paulraj

... Petitioner

Vs.

The Registrar of Co-op Societies,
Kilpauk, Chennai-10.

... Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to release the accumulated earned leave standing to petitioner's credit as on 30.06.2005 the date of his retirement from service, without any further delay.

For Petitioner : Mr.S.Venkataraman

For Respondent : Mr.L.P.Shanmugasundaram,
Spl.GP (Co-op)

O R D E R

By consent, this writ petition is taken up for final disposal at the admission stage itself.

2.The case of the petitioner is that the petitioner was working as Joint Registrar of Co-op Societies and was due to retire from service on superannuation on 30.06.2005. However, by memo dated 30.06.2005, he was suspended from service and after series of litigations, he came to be permitted to retire from service by G.O 2(D) Co-op, Food and Consumer Protection Department dated 15.12.2014. Later all the pending disciplinary proceedings came to an end with imposition of reduction of pension and as on date only one Criminal Appeal preferred by the State is pending before the I Additional Sessions Court, Salem and surcharge proceeding pending. Hence the petitioner has made a representation dated 16.07.2018 to the respondent for encashment of accumulated earned leave. But till date the same is pending without consideration. Hence, the petitioner has filed the present writ petition.

3.The grievance of the petitioner is that till date the respondents have not passed any order, granting any earned leave and unearned leave to his credit and gratuity as per the

fundamental rule viz., 86 (a) (i) (iii).

4. The learned counsel appearing for the petitioner would submit that the petitioner attained the age of superannuation, he was permitted to retire from service. However, surcharge proceedings are pending against him. 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 he is entitled to get on attaining the age of superannuation. He would further submit that even assuming that the surcharge proceedings would result in initiating adverse orders against the petitioner, still he is entitled to get these benefits.

5. The learned Special Government Pleader appearing for the respondent would submit that the petitioner is not entitled for encashment of earned leave and unearned leave as well as gratuity since surcharge proceedings initiated against him, are pending and he is entitled only after finalization of the said surcharge proceedings.

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 Special Government Pleader appearing for the respondent, 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 is entitled to claim encashment of Earned leave, Unearned Leave and therefore the respondent is directed to disburse the same within a period of twelve weeks from the date of receipt of a copy of this order."

No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Registrar of Co-op Societies,
Kilpauk,
Chennai-10.

+1cc to Mr.S.Venkataraman, Advocate, S.R.No. 99345

+1cc to the Government Pleader, S.R.No. 99926

W.P.No.33252 of 2019

JP (CO)

GN (11/02/2020)

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