



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P (MD) No.8775 of 2019

WEB COPY

A.Sahayaraj

... Petitioner

Vs.

The Principal Secretary to the Government,
Revenue and Disaster Management Department,
Services Wings, Ser. 2(1) Section,
Secretariat,
Chennai.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records relating to impugned order passed by the respondent in his letter No.41661/Ser.2(1)/2018-2, dated 15.02.2019 and quash the same as arbitrary and illegal and consequently direct the respondent to disburse the petitioner's General Provident Fund, Special Provident Fund, Encashment of Earned Leave and other retirement monetary benefits within the stipulated time.

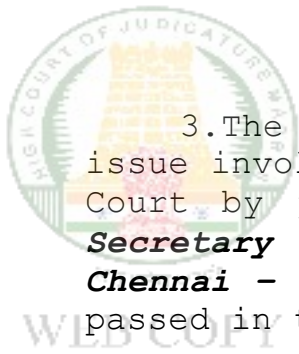
For Petitioner : Mr.K.Baalasundharam

For Respondent : Mrs.J.Padmavathy Devi,
Special Government Pleader.

ORDER

This writ petition has been filed to quash the order passed by the respondent, dated 15.02.2019 and consequently, to direct the respondents to disburse the petitioner's General Provident Fund, Special Provident Fund, Encashment of Earned Leave and other retirement monetary benefits within the stipulated time.

2.The grievance of the petitioner is that he was initially appointed as Junior Assistant in the respondent Department and after several promotions, finally promoted as Deputy Collector. On account of certain allegations, he was placed under suspension on the very date of his retirement viz., 30.06.2018 and his services were retained and was not allowed to retire from service. Seeking General Provident Fund, Special Provident Fund and other retirement monetary benefits, the petitioner filed a Writ Petition in W.P(MD)No.20475 of 2018. Pending the Writ Petition, by order, dated 15.02.2019, the respondent rejected the claim of the petitioner. Challenging the same, the petitioner has filed the present Writ Petition.



3. The learned counsel for the petitioner submitted that the issue involved in the writ petition had already been settled by this Court by judgment dated 31.07.2018, in **W.A.No.1485 of 2018 [The Secretary to Government, Higher Education Department, Secretariat, Chennai - 600 009 Vs. K.Sundaramoorthy]** and hence, similar order be passed in the writ petition also.

4. The relevant portion of the above said judgment reads as follows:

"7. It appears that this Court has passed an order on 22.08.2017 in W.P.No.139 of 2016, wherein, under similar circumstances, a direction was issued to the authorities to disburse the personal contribution of the writ petitioner therein, including Provident Fund, Special Provident Fund, Encashment of Earned Leave and Encashment of Unearned Leave within a specified time frame. Relying upon the said order, the learned single Judge has passed the impugned order granting such relief to the respondent therein.

8. In this connection, it would be appropriate to refer to the decision passed by this Court in W.A.No.71 of 2017, dated 14.11.2017. In that case, due to certain irregularities in the allotment of plots, the respondent therein was kept under suspension. He has been denied all the terminal benefits. However, he was paid only subsistence allowance upto 30.06.2012 and subsequently, only provisional pension was paid. Thereafter, the authorities have sanctioned only the General Provident Fund. The request for sanction of Special Provident Fund and Encashment of Earned Leave/Private Affairs at his credit were rejected. The learned counsel appearing for the respondent therein relied upon the decision of the Jharkhand High Court in 2007(2) BLJR 2847 (Dr.Dudh Nath Pandey Vs. The State of Jharkhand), wherein it has been held that the Government has no power to withhold gratuity and pension during the pendency of the departmental proceeding or criminal proceeding. It has also been held that it does not give any power to withhold Leave Encashment at any stage either prior to the proceeding or after conclusion of the proceeding. Relying upon the said decision, this Court ordered to settle the General Provident Fund, Special Provident Fund and Encashment of Earned Leave/Private Affairs, within a period of two months.

9. We have no second opinion over the above settled position of law.



10.Hence, the impugned order passed by the learned single Judge is confirmed and the Writ Appeal stands dismissed. The appellants are directed to disburse the Encashment of Earned Leave on Private Affairs and the personal contribution made by the respondent herein to the Special Provident Fund, within a period of two months from the date of receipt of a copy of this Judgment."

5.The learned Special Government Pleader appearing for the respondent has not seriously objected to the above submission.

6.Under such circumstances, in the light of the above cited decision, the impugned order is liable to be quashed. Accordingly, the impugned order is quashed and the Writ Petition is allowed and a similar direction is issued directing the respondent to disburse the General Provident Fund, Special Provident Fund, Encashment of Earned Leave on Private Affairs and other retirement monetary benefits, if he is otherwise found eligible, within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS)

ps

To

The Principal Secretary to the Government,
Revenue and Disaster Management Department,
Services Wings, Ser. 2(1) Section,
Secretariat,
Chennai.

+1 CC to M/s.K.BAALASUNDHARAM, Advocate
(SR-63149[F] dated 26/04/2019)

+1 CC to M/s.SPL GP (SR-63367[F] dated 27/04/2019)

W.P(MD)No.8775 of 2019
25.04.2019

ES/20.05.2019/3P/4C