

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 19.06.2019****CORAM:****THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**

WEB COPY

Writ Petition (MD).No.518 of 2017

P.Subramanian

... Petitioner

Vs.

1. The Director,
Medical and Rural Health Services,
Chennai -6.

2. The Joint Director,
Health Services,
Madurai at Usilampatti,
Madurai District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of the second respondent dated 09.12.2016 vide his proceedings in Mu.Mu.No.3185/NiPi2/2016 and quash the same as illegal and consequently, direct the respondents to disburse the retirement benefit viz., Special Provident Fund, Encashment and Death cum Retirement, Gratuity to the petitioner within the time frame as fixed by this Court.

For Petitioner : Mr.T.Vadivelan

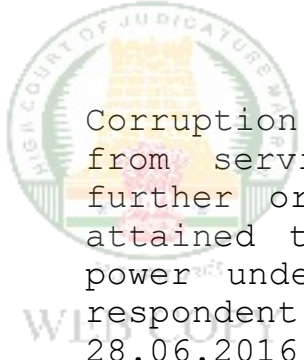
For Respondents : Mr.Aayiram K.Selvakumar

Additional Government Pleader

O R D E R

This writ petition has been filed for issuance of a Certiorarified Mandamus to call for the records pertaining to the impugned order of the second respondent in Mu.Mu.No.3185/NiPi2/2016, dated 09.12.2016 and quash the same as illegal and consequently direct the respondents to disburse the retirement benefits viz., Special Provident Fund, Encashment and Death cum Retirement, Gratuity to the petitioner.

2. According to the petitioner, while he was working as an Assistant in Government Hospital, Peraiyur, Madurai, a case in Crime No.6 of 2015 was registered by the Vigilance and Anti Corruption Police, Madurai District, on 13.05.2015, for the offences under Sections 7 and 13 r/w. (1)(d) of Prevention of

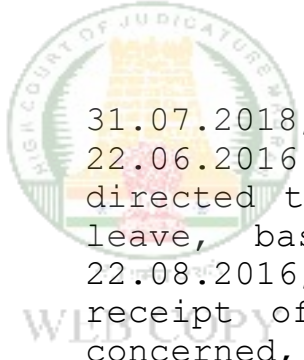


Corruption Act, 1988, and he was placed under deemed suspension from service with retrospective effect from 13.05.2015 until further orders in Proceedings No.1770/SC/2015. Subsequently, he attained the age of superannuation on 30.06.2016. By virtue of power under Rule 56(i)(c) of the Fundamental Rules, the first respondent has passed the order in Ref.No.33706/SC1/1/2015, dated 28.06.2016, in which the petitioner was not permitted to retire from service pending the criminal case. Subsequently, the petitioner made a representation on 01.07.2016 to the second respondent to pay pension amount and retirement benefits viz., payment of gratuity, leave encashment of earned leave and unearned leave, special provident fund and provisional death cum retirement gratuity. The second respondent has considered the petitioner's representation and passed an order in his proceedings in Mu.Mu.No.3105/NiPi2/2016, dated 22.08.2016, to disburse the leave encashment amount to him. But, subsequently, the second respondent has passed an order in his proceedings in Mu.Mu.No.3185/NiPi/2/2016, dated 09.12.2016, wherein the order passed by the second respondent, dated 22.08.2016 was cancelled without assigned any valid reason and no opportunity was granted to the petitioner. Challenging the aforesaid impugned order, the present writ petition has been filed before this Court.

3. The learned counsel appearing for the petitioner would submit that the second respondent has rejected the claim of the petitioner in total without granting earned leave, unearned leave, special provident fund to the petitioner. In support of his submission, the learned counsel for the petitioner placed reliance upon the unreported judgment of the Division Bench of this Court in W.A.No.1485 of 2018, dated 31.07.2018.

4. The learned Additional Government Pleader appearing for the respondents would submit that by order dated 09.12.2016, the original order passed by the second respondent, dated 22.06.2016, was cancelled.

5. On perusal of the impugned order dated 09.12.2016, it could be seen that the second respondent has not provided any opportunity to the petitioner and passed the impugned order. Therefore, the impugned order is liable to be quashed on the ground that the earlier order dated 22.06.2016 was cancelled by the second respondent without providing opportunity to the petitioner. Hence, the second respondent has violated the principles of natural justice, not being heard, before cancelling the order dated 22.06.2016. Therefore, this Court has no hesitation to set aside the impugned order passed by second respondent dated 09.12.2016. Accordingly, the writ petition is allowed and the impugned order dated 09.12.2016 passed by the second respondent is set aside and the petitioner is entitled for earned leave and unearned leave, by considering the judgment of the Division Bench of this Court in W.A.No.1485 of 2018 dated



31.07.2018, and the earlier of the second respondent dated 22.06.2016 is perfectly valid. Therefore, the second respondent is directed to disburse the encashment of earned leave and unearned leave, based on the order in Mu.Mu.No.3105/NiPi2/2016, dated 22.08.2016, within a period of twelve weeks from the date of receipt of a copy of this order. Insofar as the gratuity is concerned, it is open to him to seek his remedy, without prejudice to the final judgment passed in the criminal case. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

akv

To

1. The Director,
Medical and Rural Health Services,
Chennai -6.

2. The Joint Director,
Health Services,
Madurai at Usilampatti,
Madurai District.

+ 1 CC to Mr.T.Vadivelan, Advocate in SR.No.70206

+ 1 CC to The Special Government Pleader SR.No.70292

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