

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.09.2020
Pronounced on : 15.09.2020

CORAM:
THE HON'BLE MR. JUSTICE V.PARTHIBAN

WP No.11779 of 2020

AR.K.Prabu

.. Petitioner

Vs

1. The Principal Secretary to Government,
Public Works Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2. The Engineer-in-Chief (WRD) &
Chief Engineer, PWD (General),
Chepauk, Chennai - 5.

3. The Chief Engineer,
Water Resources Department,
Madurai Region,
Thallakulam Madurai - 2.

4. The Superintending Engineer WRD,
Public Works Department,
Periyar Vaigai Basin Circle,
Madurai-1.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the respondents to sanction Encashment of Leave (238 days), Unearned Leave on Private Affairs (90 days) and Special Provident Fund dues payable to the petitioner along with interest in the light of the law laid down by this Hon'ble Court in W.A.(MD) No.105/2019 dated 31.07.2019.

For Petitioner : Mr.V.Vijay Shankar

For Respondents: Mr.R.A.S.Senthilvel
Additional Government Pleader.

O R D E R

This matter is taken up today, through Web hearing.

2. The writ petition has been filed seeking for the following prayer:

"for issuance of Writ of Mandamus,
directing the respondents to sanction
Encashment of Leave (238 days), Unearned
Leave on Private Affairs (90 days) and
Special Provident Fund dues payable to the

petitioner along with interest in the light of the law laid down by this Hon'ble Court in W.A. (MD) No.105/2019 dated 31.07.2019."

3. The case of the petitioner is that he joined as Assistant Engineer in 1997 and was promoted as Assistant Executive Engineer and further as Executive Engineer. While he was working as Executive Engineer, after completion of 31 years of service, on the eve of his retirement on 28.02.2018, he was placed under suspension on 27.02.2018 and on the final day i.e., 28.02.2018, a charge memorandum was issued alleging that there was a deficiency in the execution of work of Rehabilitation of the Pallapatti Old Anaicut.

4. Thereafter, a detailed enquiry was held into the charges and the Enquiry Officer found that the charges were not proved. However, the Government disagreed with the findings of the Enquiry Officer and after obtaining further explanation from the petitioner, imposed the penalty of dismissal from service. The said dismissal was according to the petitioner, is the subject matter of challenge in other proceedings, before this Court.

5. However, the grievance of the petitioner in this writ petition is that certain retirement benefits which were due and payable to him notwithstanding the order of dismissal, have not been settled and therefore, he is before this Court seeking to direct the respondents to sanction Encashment of Leave (238 days), Unearned Leave on Private Affairs (90 days) and Special Provident Fund dues, as admissible to the petitioner with interest.

6. Mr.V.Vijayshankar, learned counsel appearing for the petitioner submitted that the issue of grant of the above benefits as prayed for by the petitioner is squarely covered by various decisions of this Court by learned Single Judges as well as Division Benches.

7. In support of such statement, the learned counsel would refer to the orders passed by the Division Bench of this Court in WA No.1285 of 2019 dated 10.04.2019 and in WA (MD) No.105 of 2019 dated 31.07.2019 and also a decision of a learned Single Judge in WP(MD) No.15484 of 2019 dated 23.01.2020. All these decisions have been placed for consideration of this Court in the typed set of documents.

8. After perusal of the Division Bench Judgments, this Court is readily convinced that the matter in issue is covered and there is no requirement for any counter affidavit to be filed in this case, as law on the point is not disputed. In fact in paragraph No.13 of the Division Bench order, it is clearly ruled as under in WA No.1285 of 2019 dated 10.04.2019.

"13. As explained in detail, we do not find anything contained in any of the statutory provisions

relied by the Learned Special Government Pleader which have the effect of enabling the Government to withhold the encashment of the accumulated earned leave of a Government Servant when he attained the age of superannuation during his continuance in service pursuant to disciplinary proceedings or criminal prosecution pending against him at that point of time. Accordingly, we hold that in the absence of an enabling statutory provisions to that effect, an unfair advantage cannot be taken of a rather fortuitous situation by snatching the frugally accumulated earned leave of a Government Servant in a capricious manner, which remains unencashed at the time of his attaining the age of superannuation."

9. In another Division Bench decision, which is reported in 2019 (5) CTC 19 [Secretary to Government, Revenue Department, Secretariat, Chennai and 2 others Vs. K.Palaniyandi], in regard to the same aspect, it is held as under in paragraph No.15 of the judgment.

"15. There are two types of monetary benefits payable to a Government Servant on retirement. One type of such benefits, such as Earned Leave, Provident Fund and Special Provident Fund amount, is a benefit already accrued and got credited to the account of the employee, which he is entitled to receive automatically on attaining superannuation. Those amounts become his personal property. It makes no difference even if he is not permitted to retire and a departmental proceedings is initiated against him. In other words, those amounts are derived out of like his "savings" and therefore, the employer cannot stake any claim or impose any restriction as to when such amount could be paid to the employee even after attaining the age of superannuation. In other words, even as per rules, these amounts are payable either on the date of superannuation or on the date of termination of extension of service. Such payment is to be made even to a person dismissed from service. When such being the position, there cannot be any justification on the part of the employer to retain the said sum by citing the pendency of proceedings."

10. Following the legal precedent, recently, a learned Single Judge of this Court in WP (MD) No.15484 of 2019, gave direction in that writ petition as under, vide order dated 23.01.2020.

"6. In the light of the above, there shall be a direction to the first respondent to disburse the encashment of leave salary and special provident fund of the petitioner's contribution, by passing appropriate order in his representation dated 03.01.2019 and ensure that such disbursement is made at least within a period of eight weeks from the date

of receipt of a copy of this order."

11. On notice, Mr.R.A.S.Senthilvel, learned Additional Government Pleader appeared for the respondents.

12. Mr.R.A.S.Senthilvel, learned Additional Government Pleader would not dispute the legal position as aforementioned.

13. Therefore, this Court being satisfied as to the applicability of the above decisions to the present prayer sought by the petitioner, has no hesitation in allowing the writ petition. Therefore, the writ petition is allowed. The respondents are directed to settle the benefits payable towards Encashment of Leave, Unearned Leave on Private Affairs and the Special Provident Fund, in terms of the representation of the petitioner, as admissible and payable within a period of four weeks from the date of receipt of a copy of this order.

14. The writ petition is allowed, accordingly. No Costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Public Works Department,
Fort St.George, Secretariat, Chennai - 600 009.

2. The Engineer-in-Chief (WRD) &
Chief Engineer, PWD (General), Chempauk, Chennai - 5.

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Madurai Region, Thallakulam Madurai - 2.

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Public Works Department,
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+1cc to the Government Pleader, S.R.No. 31502

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