

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.7877 of 2016

M.Manthiram

..
Petitioner

Vs

The District Forest Officer,
Thiruvannamalai North Division,
Thiruvannamalai,
Now functioning at
Packmarpettai, C.C.Road,
Polur - 606 803,
Thiruvannamalai District.

..
Respondent

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondent to disburse the Gratuity, Special Provident Fund, Encashment of Earned Leave and Encashment of Unearned Leave on private affairs to the petitioner.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.M.Elumalai
Government Advocate

ORDER

This writ petition has been filed by the petitioner seeking for a direction to the respondent to disburse the Gratuity, Special Provident Fund, Encashment of Earned Leave and Encashment of Unearned Leave on private affairs to the petitioner.

2. According to the petitioner, he was appointed as Forester at Vellore Range, Vellore Division. While, the petitioner was working as Forester, he was arrested on 06.07.2005 under the provision of Prevention of Corruption Act. Subsequently, the District Forest Officer, Vellore Division, passed the suspension order on 07.07.2005. Hereafter, he was reinstated into the service on

31.05.2006. Again, he was suspended from service on 26.02.2008 on the eve of his superannuation falls on 29.02.2008, but on the same day, the respondent passed an order not permitted the petitioner to retire from service, due to the pendency of the criminal case in S.C.No.2 of 2006 before the learned Chief Judicial Magistrate-cum-Special Judge, Vellore, for the offence under Section 7 and 13(2) r/w Section 13(1)(d) against the petitioner under the provision of Prevention of Corruption Act. Thereafter, only GPF alone disbursed as retirement benefits and other retirement benefits like Gratuity, Special Provident Fund, Encashment of Earned Leave and Encashment of Un-earned Leave on private affairs and the same has not been disbursed to him. On 09.02.2016, he made a representation to the respondent/District Forest Officer herein requesting to disburse his retirement benefits, but no order has been passed by the respondent herein till now. Hence, the petitioner has come forward with the present writ petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner was working as Forester in Thiruvannamalai District, on 06.07.2005, he was arrested under the provision of Prevention of Corruption Act. The petitioner reached the age of superannuation on 29.02.2008. In the meanwhile, the respondent passed an order not permitted the petitioner to retire from service, due to the pendency of the criminal case in S.C.No.2 of 2006 before the learned Chief Judicial Magistrate-cum-Special Judge, Vellore, for the offence under Section 7 and 13(2) r/w Section 13(1)(d) against the petitioner under the provision of Prevention of Corruption Act. In these circumstances, the petitioner has filed this writ petition seeking benefits like Gratuity, Special Provident Fund, Encashment of Earned Leave and Encashment of Unearned Leave on Private Affairs.

4. Further, the learned counsel appearing for the petitioner would submit that in the event of conviction and dismissal from service, the petitioner may not get Gratuity in the facts and circumstances of the case, but he cannot be deprived of Encashment of Earned Leave and Encashment of Unearned Leave on Private Affairs as those are his properties. As far as Special Provident Fund is concerned, the learned counsel is not able to state as to whether the petitioner has contributed towards the same. According to him, if there is any contribution made by the petitioner towards Special Provident Fund, the same cannot also be denied, even if he is dismissed.

5. On the other hand, the learned Government Advocate appearing for the respondent would submit that the non-disbursement of pensionary benefits to the petitioner is due to pending criminal case and nothing else the

petitioner will be settled with all pensionary benefits based on the outcome of the judgment in due course.

6. The Hon'ble Division Bench of this Court in W.A (MD) No. 903 of 2019, dated 06.09.2019 by observing the decisions made on the similar issue, has passed order directing the respondents therein to disburse the Encashment of Earned Leave and Unearned Leave on Personal Affairs. The relevant portion is extracted hereunder;

3. The appellants cannot be aggrieved by the direction for payment of Provident Fund, Earned Leave Encashment, Extraordinary Leave on Personal Affairs, as these are entitlements of the respondent and similar issue was considered in several cases and latest of which in W.A(MD)No.105 of 2019, dated 31.07.2019. The operative portion of the Judgment reads as follows:-

"18. It is to be noted at this juncture that there is no total prohibition or denial of the benefit sought for by the writ petitioner in any of the provisions made under the relevant rules. It is only a time of disbursement of such benefit is stated. Even as per the rules, these benefits sought by the writ petitioner become payable automatic at the relevant point of time. Therefore, when the entitlement for such payment is not in question and only the time of disbursement is postponed under a given circumstance, especially when the retention of those benefits is not having a bearing on any eventuality, the Court can interfere and direct such payment even before the relevant time for disbursement of such payment, when the beneficiary seeks to get the same immediately. When the entitlement is not in dispute, it makes no difference whether it is paid at the request of the beneficiary or at a latter date viz., relevant time, at which, it is liable to be paid.

19. The learned Single Judge of this Court in a decision reported in 2016(1) LLJ 730 (Mad) (cited supra) has dealt with the above issue and found at paragraphs 15 and 16 as follows:-

"15. On the other hand, if an employee has chosen to accumulate his earned leave to his credit, the encashment of the same cannot be deprived on the dismissal, since his Earned Leave to his credit is nothing but his property as held by the Full Bench of the

Punjab and Haryana High Court.

16. Likewise, in this case, the issue is only relating to payment of Earned Leave Encashment Benefit. The same principle that is applicable to Earned Leave Encashment Benefit is also applicable to the payment of General Provident Fund and to the contribution made by a Government employee to Special Provident Fund. In the case of industrial employees, the contribution made by the industrial workman to the Provident Fund from his wages could not be deprived by the employer even if he is dismissed from service.

20. The said decision was approved by the Division Bench of this Court in W.A(MD)No. 1423 of 2018 dated 22.10.2018, wherein the Division Bench has observed as follows:-
Challenging the order of the learned Single Judge, by which the retiral benefits were sought to be disbursed to the respondent by the appellants notwithstanding the pendency of the criminal case, pending on the date of superannuation, the present appeal has been filed.

2. The learned Special Government Pleader appearing for the appellants would submit that the order of the learned Single Judge cannot be sustained in the eye of as the respondent was not permitted to retire, pending criminal case.

3. The learned Counsel appearing for the respondent would submit that the encashment of earned leave is acquiring a property owned by a person and therefore, notwithstanding the order of dismissal, the same cannot be denied. Reliance has been made on the order of the learned Single Judge in T.Veeravinothan Vs. Registrar of Co-operative Societies, Kilpauk, Chennai and others reported in 2016-1-LLJ-730 (Mad), wherein it has been held as follows:

"15. On the other hand, if an employee has chosen to accumulate his earned leave to his credit, the encashment of the same cannot be deprived on the dismissal, since his Earned Leave to his credit is nothing but his property as held by the Full Bench of the Punjab and Haryana High Court.

4. Considering the above, we are of the view that the order of the learned Single Judge giving a direction to the respondents to disburse all the benefits cannot be sustained, except to the extent of payment of earned

leave salary alone. In the light of the decision supra, the encashment of earned leave is to be treated as a property owned by a person even one assumes a worst situation by which the employee is dismissed.

5. In the light of the above, the Writ Appeal, is partly allowed and the order and direction issued in the Writ Petition insofar as it relates to disbursement of withheld Provident Fund, Earned Leave Encashment, Extraordinary Leave on Personal Affairs, is confirmed and the direction to disburse the Gratuity, is set aside. The disbursement shall be effected within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed. "

7. A reading of the above judgment would show that it has been repeatedly and consistently held by the Supreme Court, this Court and Punjab and Haryana Court, unless the rules did not permit, leave encashment amount payable to an employee cannot be withheld.

8. In view of the above-said decisions, the writ petitioner is entitled to avail Encashment of Earned Leave and Unearned Leave on Private Affairs. Accordingly, the writ petition is disposed of. The respondent shall disburse the amount after the deduction of due amount pending on the side of the respondent, if any, 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

msm

To

The District Forest Officer,
Thiruvannamalai North Division,
Thiruvannamalai, Now functioning at
Packmarpettai, C.C.Road, Polur - 606 803,
Thiruvannamalai District.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.17150
+1cc to the Spl Government Pleader(Forest), S.R.No.17368

W.P.No.7877 of 2016

BR(CO)
CB(03/08/2020)



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