



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.07.2020**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.7834 of 2020

A.Pauldurai

...Petitioner

-Vs-

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Assistant Commissioner (Excise),
Collectorate Complex,
Virudhunagar District,
Virudhunagar.

...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents i.e., the District Collector, Virudhunagar and the Assistant Commissioner (Excise), Virudhunagar to take immediate action to disburse the Encashment of Leave Salary and Special Provident Fund of the petitioner's contribution within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam
For Respondents : Mr.S.Dhayalan,
Government Advocate

ORDER

The prayer sought for in this writ petition is for a Writ of Mandamus, directing the respondents i.e., the District Collector, Virudhunagar and the Assistant Commissioner (Excise), Virudhunagar to take immediate action to disburse the Encashment of Leave Salary and Special Provident Fund of the petitioner's contribution within a specified time frame that may be fixed by this Court.

2.Heard Mr.S.Visvalingam, learned counsel appearing for the petitioner and Mr.S.Dhayalan, learned Government Advocate appearing for the respondents.

3.With the consent of both sides, this writ petition is disposed of at the admission stage itself.

4.The petitioner was working as a Tahsildar and on superannuation when he was about to retire from service, he was not permitted to retire from service because there was a trap case



against him, which was pending investigation, therefore, admittedly, the petitioner was not permitted to retire from service.

5. After superannuation period, the petitioner was paid only Provident Fund amount and insofar as the other retirement benefits, since the disciplinary proceedings is pending, the same have not been released.

6. In this context, it is the case of the petitioner as has been projected by the learned counsel for the petitioner that, assuming that the petitioner has not been permitted to retire because of the pendency of the criminal case, unmindful of the same, the petitioner is entitled to get the Special Provident Fund as well as the encashment of leave salary alone.

7. In this regard, the learned counsel for the petitioner submitted that a number of orders in this line have been passed by this Court and in this regard he relied upon a decision of this Court in W.P(MD)No.13376 of 2018 in the matter of A.Karunanithi Vs. the District Collector and two others, order dated 22.06.2020.

8. In that case, I had a occasion to consider the similar issue where I have passed the following order:-

"8. I have considered the said submissions made by both sides and have also perused the materials placed before this Court.

9. Since the issue raised in this Writ Petition has been decided in a number of cases and in the case stated supra, I had an occasion to consider a similar issue and pass an order as referred above. In view of the same, this Court is of the concerned view that, the petitioner is also entitled to get the said benefits of Provident Fund amount, Special Provident Fund amount and Encashment of Leave Salary. Therefore, in the circumstances of the case, this Court is inclined to pass the following orders:

"That the respondents are directed to disburse General Provident Fund, Special Provident Fund and Encashment of Leave Salary payable to the petitioner, by calculating the same within a period of four weeks from the date of receipt of a copy of this order."

10. With these directions, this writ petition is ordered as indicated above. However, there shall be no order as to costs."



9. By citing the aforesaid decision and other similar decisions, the learned counsel for the petitioner would submit that, if at all the petitioner is not entitled to get any other retiral benefits, atleast he would be eligible to get the Provident Fund, Special Provident Fund and encashment of leave salary, out of these three benefits, the petitioner had already received the Provident Fund amount but the Special Provident Fund as well as the encashment of leave salary, for which, the petitioner though entitled to, were not paid to the petitioner. Hence, in this regard, the petitioner has given a detailed representation to the respondents on 23.12.2019. However, the said representation has not been considered and no order has been passed and the above said two benefits so far are not given to the petitioner. Hence, the learned counsel for the petitioner would submit that a suitable direction to that effect may be given.

10. The learned Government Advocate appearing for the respondents would submit that, admittedly there is a pendency of criminal case against the petitioner and unless and until the case is completed, the decision as to whether the petitioner can be permitted to retire or not cannot be decided at this juncture and therefore, on superannuation he was not permitted to retire. Therefore, he is not entitled for any retirement benefits.

11. The learned Government Advocate appearing for the respondents however fairly submits that, insofar as the Special Provident Fund as well as the Encashment of leave salary are concerned, if at all the petitioner is entitled to, certainly his representation dated 23.12.2019 would be considered by the respondents within a time frame to be stipulated by this Court.

12. Considering the said submissions made by the learned counsel appearing for both sides, after taking note of the earlier decisions of this Court, including the decision referred to above, and by considering the factual matrix of this case which is squarely covered by the above decision, this Court is inclined to dispose of this writ petition with the following directions:-

"that the respondents, especially, the first respondent is hereby directed to consider the representation of the petitioner, dated 23.12.2019 submitted through the second respondent, on merits and in accordance with law and pass orders there on, with regard to the sanctioning of the Special Provident Fund as well as the encashment of leave salary alone and suitable orders to that effect shall be passed within a period of eight weeks from the date of receipt of a copy of this order."



13. With these directions, this writ petition is disposed of.
No costs.

WEB COPY

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The District Collector,
Virudhunagar District,
Virudhunagar.
- 2.The Assistant Commissioner (Excise),
Collectorate Complex,
Virudhunagar District,
Virudhunagar.

Order made in
W. P. (MD) No. 7834 of 2020

Dated:
22.07.2020

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