BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **26.02.2020**
CORAM:
THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.[MD] No.626 of 2019
and
C.M.P.(MD) No.5258 of 2019

1.The Director General of Police,
Mylapore, Chennai - 600 004.

2.The Deputy Inspector General of Police,
Thiruchirappalli Range, Thiruchirappalli.

3.The Superintendent of Police,
Pudukkottai District,
Pudukkottai. : Appellants/Respondents

Vs.

P.Veeranan : Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 26.02.2019 made in W.P.(MD) No.3918 of 2019 on the file of this Court.

Prayer in WP(MD). 3918/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the third respondent i.e, the Superintendent of Police, Pudukottai District, Pudukottai to take immediate action to disburse the Encashment of Leave Salary and payment of Special Provident Fund of his own contribution, to the petitioner within s specified time frame that may be fixed by this Court.

For appellants : Mr.V.R.Shanmuganathan
Special Government Pleader

For Respondent : Mr.S.Visvalingam

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JUDGMENT

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[Judgment of the Court was delivered by
SUBRAMONIUM PRASAD, J.]

Challenging the grant of Special Provident Fund and Leave salary to the writ petitioner, who has attained the age of superannuation, but has not been permitted to retire, the Government has filed the instant appeal.

2. The issue regarding the payment of Special Provident Fund and Leave Encashment to an employee, who has attained the age of superannuation but not permitted to retire, in view of the disciplinary enquiry or criminal proceedings pending against him, is no longer *res integra* and the same is covered by a Division Bench judgment of this Court dated 31.07.2019 in W.A.(MD) No.105 of 2019 (The Secretary to Government, Revenue Department, Secretariat, Chennai - 600 009 and others Vs. K.Palaniyandi), wherein, the Honourable Division Bench of this Court has observed as under:

> *4.The writ petitioner was serving as Assistant Commissioner of Excise at Virudhunagar and his date of superannuation was 30.06.2016. However, he was not allowed to retire on the date of superannuation and on the other hand, he was placed under suspension, by an order, dated 30.06.2016. Though the writ petitioner is getting subsistence allowance and also has received General Provident Fund, he has not received the Encashment of Leave Salary and Special Provident Fund. Therefore, the above writ petition was filed, wherein, the Writ Court passed the order as stated supra.*
>
> *5.The contention of the appellants in this appeal, is as follows:- The writ petitioner though attained the age of superannuation on 30.06.2016, he was not permitted to retire, in view of pendency of criminal case against him. Therefore, he was retained in service, by an order, dated 30.06.2016. If a Government Servant is suspended before retirement or permitted to retire without prejudice to the criminal proceedings pending against him, he is entitled for Encashment of Earned Leave amount only after finalization of the disciplinary proceedings and regularization of suspension period. As per Rule 7 of the Tamil Nadu Leave Rules, 1933, a person, who is placed under suspension and not permitted to retire from service on the date of superannuation, is not entitled for Encashment of Earned Leave and Unearned Leave on private affairs. Since the writ petitioner was retained in service as contemplated under Rule 56 (1)(c) of the Fundamental Rules, he is not entitled for his claim, till the disposal of the case filed against him.*

3. In view of the above, the appeal is liable to be dismissed. The learned counsel for the appellant would also point

out that apart from the payment of Provident Fund and Leave Encashment, an employee, who was placed under suspension and continuous to be under suspension, even after attaining the age of superannuation, in view of the pendency of the disciplinary enquiry or criminal proceedings, is entitled to such amount, as it is provided under the proviso to Rule 53 (1) of the Fundamental Rules, which reads as under:

> *"53. (1) A Government servant who is placed or deemed to have been placed or continues to be under suspension shall be entitled to the following payments, namely:-*
>
> *(a) Subsistence allowance at an amount equal to half of the pay last drawn by the Government servant and in addition dearness allowance, if admissible on the basis of half of the pay last drawn:*
> *Provided that where the period of suspension exceeds six months, the authority which made or is deemed to have made, the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows:-*
>
> *(i) The amount of subsistence allowance may be increased by a suitable amount, not exceeding fifty per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;*
>
> *(ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding fifty per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, directly attributable to the Government servant;*
>
> *(iii) the amount of dearness allowance shall be based on the increase or the decrease in the amount of subsistence allowance, as the case may be, admissible under clause (i) or (ii) above:*
>
> *Provided further that if a Government servant*

under suspension continues to be under suspension after the date of retirement, the amount of subsistence allowance shall be reduced to the amount of pension which will be provisionally admissible to him, whether or not the Government servant will be exonerated of the charges for which he was placed under suspension and the provisions of the preceding proviso shall not apply to such cases.

(b) The authority which made or which is deemed to have made the order of suspension may, if it is satisfied that the Government servant continues to incur the expenditure for which the compensatory allowances are granted, direct that the Government servant shall be granted in addition, such compensatory allowances as are admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension as the Government may sanction by general or special order.

(c) Government servants under suspension shall be paid house rent allowance in full at the rates admissible at the place where they are ordered to stay during suspension with reference to the pay last drawn before suspension. Where the headquarters of a Government servant under suspension is changed on his request, he shall be eligible for the house rent allowance at the rates admissible at the earlier headquarters or at the new headquarters whichever is less.

4. We, therefore, direct the State/appellants to forthwith release the amount of Provident Fund and Leave Encashment due as well as the amount payable under the proviso to Rule 53 (1) of the Fundamental Rules, within a period of one month from the date of receipt of a certified copy of this judgment.

5. The Writ Appeal stands dismissed, with the above direction. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcg/mm
To

1.The Director General of Police,
Mylapore, Chennai - 600 004.

2.The Deputy Inspector General of Police,
Thiruchirappalli Range, Thiruchirappalli.

3.The Superintendent of Police,
Pudukkottai District,
Pudukkottai.

+1 CC to M/s.S.VISVALINGAM, Advocate (SR-8833[F] dated 27/02/2020)

JUDGMENT MADE IN
W.A.[MD]No.626 of 2019
26.02.2020

gcg
TK/SAR. /16.03.2020/5P/5C