



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.10889 of 2020

and

W.M.P. (MD) No.9566 of 2020

WEB COPY

M.Thiruvalluvan,
Personal Assistant to District Educational Officer,
Orathanadu,
Thanjavur District. ... Petitioner

Vs.

The District Educational Officer,
O/o the District Educational Office,
Melaulur Village,
Orathanadu Taluk,
Thanjavur District. ... Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent in his proceedings in O.Mu.No.1944/A1/2020 dated 19-06-2020 and quash the same as illegal and consequentially to direct the respondent to sanction and disburse amount of the Encashment of Earn Leave, leave on private affairs and special provident fund along with accrued interest thereon within the period that may be stipulated by this Court.

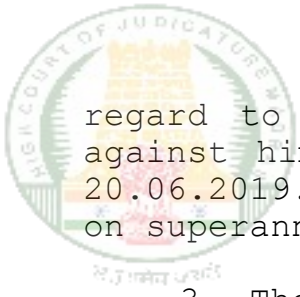
For Petitioner : Mr.H.Mohammed Imran,
For Ajmal Associates

For Respondent : Mr.M.Thilagar,
Government Advocate

O R D E R

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent in his proceedings in O.Mu.No.1944/A1/2020 dated 19-06-2020 and quash the same and consequentially direct the respondent to sanction and disburse amount of the Encashment of Earn Leave, leave on private affairs and special provident fund along with accrued interest thereon within the period that may be stipulated by this Court.

2. The petitioner had been working as a P.A. to District Educational Officer, Orathanadu, Thanjavur District. While so, with
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regard to the pendency of the disciplinary proceedings initiated against him, he has been placed under suspension with effect from 20.06.2019. Therefore, he was not permitted to retire from service on superannuation.

3. Thereafter, the petitioner, after superannuation, since he was not permitted to retire, was allowed only to get subsistence allowance equivalent to the pension payable to him.

4. In view of the pendency of the disciplinary proceedings, no retiral benefits have so far been disbursed to the petitioner. In this context, the grievance of the petitioner is that, even if the petitioner is ultimately punished, pursuant to the pending disciplinary proceedings, the petitioner's entitlement to get encashment of Earned and Unearned leave salary as well as the Provident Fund and Special Provident Fund cannot be barred, as these benefits could be given even to those removed from service, pursuant to any disciplinary proceedings.

5. However, the respondent in the impugned order, dated 19.06.2020 has rejected the said benefits also which reads thus:-

“அன்னார் மீது நிதி சார்ந்த வழக்கு மற்றும் முதன்மைக் கல்வி அலுவலர் விசாரணை நிலுவையில் இருக்கும் பட்சத்தில் ஈட்டிய விடுப்பு, சொந்த அலுவலரின் பேரிலான ஈட்டா விடுப்பு, மற்றும் சிறப்பு, சேம நலநிதி கணக்கு முடித்து காசாகி வழங்கிட கோரியுள்ளார். அன்னார் ஓய்வப் பெற அனுமதி மறுக்கப்பட்ட நிலையில் ஓய்வூதியப் பணப்பயன்கள் பெற்று வழங்க இயலாது என்பதால் கருத்துருக்கள் இத்துடன் இணைத்து அனுப்பப்படுகிறது.

ஒப்பம் / -
மாவட்டக் கல்வி அலுவலர்.
ஓரத்தநாடு”

6. Mr.H.Mohammed Imran, learned counsel appearing for the petitioner would rely upon the Division Bench Judgment of this Court in the case of **State of Tamil Nadu rep. by the Secretary to Government and others Vs. V.Mahalingam** reported in 2019 (1) Writ L.R. 825 and also the judgment of the Hon'ble Apex Court in the case of **State of Jharkhand Vs. Jitendra Kumar Srivastava** reported in 2013 (12) SCC 210.

7. Relying upon these judgments, in a similar circumstance, a learned Judge of this Court in W.P.(MD) No.17798 of 2019 dated 13.09.2019 has passed the following order:-

“6.The respondent, by the impugned order, had rejected the request of the petitioner for encashment of earned leave on the ground that without regularising the suspension period, surrender of earned leave cannot be sanctioned. The said contention cannot be acceptable in view of the judgment of the Division Bench of this Court

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Secretary to Government and others Vs. V.Mahalingam reported in 2019 (1) Writ L.R. 825. In Paragraph No.5 of the said judgment, the Division Bench of this Court referring the judgment of the Hon'ble Apex Court in the case of State of Jharkhand Vs. Jitendra Kumar Srivastava reported in 2013 (12) SCC 210, has held that leave encashment cannot be taken away without any statutory provision and earned leave is created by Statute and it is an emolument protected as a right to property of the concerned Government Servant under Article 300-A of the Constitution of India. The relevant portion of the judgment of the Division Bench of this Court, reads as follows:-

'5. The accumulated leave may be availed by the Government Servant during his tenure of service or at the time of retirement or leaving the employment which obviously means that the right of the Government Servant to receive the same stands vested with him during that period itself which he can utilize at anytime he chooses. The Hon'ble Supreme Court of India in State of Jharkhand -vs Jitendra Kumar Srivastava [2013 (12) SCC 210] has made it abundantly clear that leave encashment cannot be taken away without any statutory provision. In short, 'earned leave' which is created by statute, partakes the character of an emolument protected as a right to property of the concerned Government Servant under Article 300-A of the Constitution. It has been provided in Rule 86(a)(i) of the Fundamental Rules that the Competent Authority shall suo motu draw and disburse the cash benefits and encashment of the earned leave at the credit of the Government Servant without formal sanction orders on the date of retirement or the date of termination or extension of service, as the case may be. The removal of a Government Servant from service as a measure of punishment or conclusion of disciplinary proceedings after extending his service on attaining the age of superannuation for that purpose, would naturally amount to 'termination of extension of service', and in terms of that rule, the Competent Authority on that date ought to have suo motu disbursed the cash benefit and encashment of earned leave, if the same had not been availed by the Petitioner earlier. The Second Respondent has wrongfully refused to pay the earned leave to the Petitioner, which he was legitimately entitled to receive, even on that date.'

7. The ratio laid down in the said judgment is squarely applicable to the facts of the present case and the petitioner is entitled to encash the earned leave and monetary benefits. The reason given by the respondent for non-encashment of earned leave is not



valid. "

8. The learned counsel also relied yet another learned single Judge order, dated 10.07.2015 in W.P.(MD) No.20530 of 2015, where he relied upon the following:

"4. The petitioner has filed the writ petition seeking a direction to the respondents to settle the aforesaid benefits. At the time of hearing the writ petition, learned counsel for the petitioner fairly submitted that since the disciplinary proceedings are pending and the petitioner is not permitted to retire from service and now, he is not pressing for the claim for gratuity. He further submitted that in the event of the disciplinary proceedings resulting in passing of the dismissal order, he would not get gratuity.

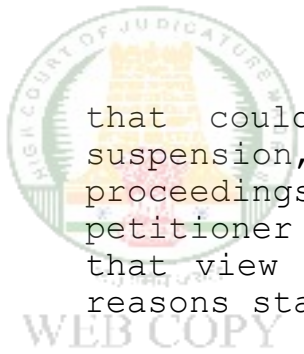
5. However, in the case of other benefits, even in the case of dismissal, he is entitled to receive the same. Hence, a direction is issued to the first respondent to settle the General Provident Fund, contribution of the petitioner to Special Provident Fund and Earned Leave Encashment benefits, within a period of four weeks from the date of receipt of a copy of this order."

9. By relying upon those decisions, the learned counsel would submit that, the law is well settled in this regard as the suspended employee pending disciplinary proceedings or even the dismissed employee, who has been removed from service is entitled to get the aforesaid benefits and therefore, the said benefits cannot be denied to the petitioner. In view of the same, the impugned order, according to the learned counsel for the petitioner is liable to be interfered with.

10. Heard Mr.M.Thilagar, learned Government Advocate appearing for the respondent, who would submit that, since the petitioner is involved in financial irregularities, as against which, now, the disciplinary proceedings is pending, he may not be entitled to get the benefits, as stated in the impugned order. Therefore, he defended the impugned order rejecting the said plea, for getting the aforesaid retiral benefits to the petitioner.

11. I have considered the said submission made by the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the official respondent and I have perused the materials placed before this Court.

12. As has been rightly pointed out by the learned counsel for the petitioner, the issue raised in this writ petition is already settled in a number of cases and some of the cases cited above, would make it abundantly clear that, the benefits like Earned Leave



that could be liable to be disbursed for those, who are in suspension, even after superannuation, facing the disciplinary proceedings. Therefore, the said benefit sought for by the petitioner could not have been rejected by the respondent and in that view of the matter, the impugned order of rejection, for the reasons stated above, is liable to be interfered with.

13. In the result, this Court is inclined to pass the following orders:-

(i) The impugned order passed by the respondent in his proceedings vide O.Mu. No.1944/A1/2020 dated 19-06-2020 is quashed; and

(ii) The matter is remitted back to the respondent for reconsideration. While reconsidering the same, based on the aforesaid legal position, the respondent shall consider the request of the petitioner for releasing the said benefits, namely Earned leave encashment as well as Special Provident fund amount payable to the petitioner and the same shall be paid to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

14. With these directions, the Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected W.M.P.(MD) No.9566 of 2020 is closed.

Sd/-

Assistant Registrar (Protocol)

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/ /2020

Sub Assistant Registrar(CS)

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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:

The District Educational Officer,
O/o the District Educational Office,
Melaulur Village, Orathanadu Taluk, Thanjavur District.

+1 CC to M/s.GP (SR-15996[F] dated 04/09/2020)

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