



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2020

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.11473 of 2020

WEB COPY

M.Krishnan

...Petitioner

-Vs-

1.The Director,
Department of Employment and Training,
(Employment Wing), Guindy, Chennai-600 032.

2.The Regional Joint Director of Employment,
K.Pudur, Madurai-625 007.

3.The District Employment Officer,
District Employment and Career Guidance Centre,
Sivagangai.

...Respondents

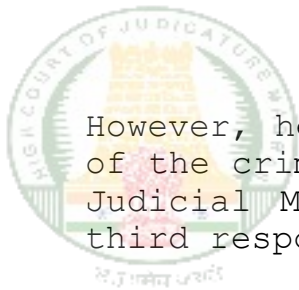
Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents 1 and 3 ie., the Director of Employment and Training in his ஓவி2/6839/2020 நாள்:10.08.2020 and communicated by the District Employment Officer, Sivagangai in his அ1/3362/2019 நாள்:29.08.2020 and quash the same and consequently, direct the respondents to disburse the Encashment of Leave Salary, Special Provident Fund and General Provident Fund of the petitioner within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam
For Respondents : Mr.G.Arjunan,
Government Advocate.

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records of the respondents 1 and 3 i.e., the Director of Employment and Training in his ஓவி2/6839/2020 நாள்:10.08.2020 and communicated by the District Employment Officer, Sivagangai in his அ1/3362/2019 நாள்:29.08.2020 and quash the same and consequently, to direct the respondents to disburse the Encashment of Leave Salary, Special Provident Fund and General Provident Fund of the petitioner, within a specified time frame that may be fixed by this Court.

2.The petitioner having served as Junior Assistant in the office of the District Employment and Career Guidance Centre, Sivagangai, has attained the age of superannuation on 30.04.2020.



However, he was not allowed to retire from service, due to pendency of the criminal case pending in C.C.No.44 of 2015 on the file of the Judicial Magistrate Court No.1, Madurai and by proceedings of the third respondent dated 30.04.2020, he was placed under suspension.

3. In this regard, it is the further case of the petitioner that after rendering 32 years of service, though he attained the age of superannuation, because of the pendency of the criminal case, he was not permitted to retire from service. Be that as it may, since he is not entitled for retirement benefits like regular pension, DCRG and Commutation of Pension, he would be entitled to General Provident Fund, Special Provident Fund and also Encashment of Earned Leave Salary. Even though the law has been well-settled in various decisions by this Court, the respondents have not paid the same. Therefore, the petitioner had given a representation to pay the said benefits i.e., General Provident Fund, Special Provident Fund and also Encashment of Earned Leave Salary and the same was rejected by the impugned proceedings dated 10.08.2020 by the first respondent and the same has been communicated by the third respondent, vide order dated 29.08.2020. Challenging the same, the present Writ Petition has been filed.

4. Mr. S. Visvalingam, learned counsel appearing for the petitioner has relied upon a number of decisions of this Court, which are as follows:-

- "(i) W.A.No.207 of 2016;
- (ii) S.L.P.No.16229 of 2016;
- (iii) W.P. (MD) No.13376 of 2018;
- (iv) W.A.No.1285 of 2019;
- (v) W.A. (MD) No.105 of 2019;
- (vi) W.A. (MD) No.68 of 2014 and 769 of 2018;
- (vii) W.A. (MD) No.626 of 2019; and
- (viii) W.P. (MD) No.7834 of 2020."

5. Among the various judgments quoted by the learned counsel appearing for the petitioner, the last such judgment dated 22.07.2020, is of mine, where confronting with the similar situation, I have passed the following order:-

"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.

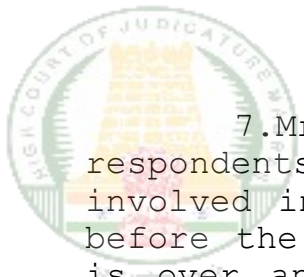
11. The learned Government Advocate appearing for the respondents however fairly submits that, insofar as the Special Provident Fund as well as the Encashment of leave salary are concerned, if at all the petitioner is entitled to, certainly his representation dated 23.12.2019 would be considered by the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

6. In view of the settled legal position, the learned counsel appearing for the petitioner would submit that, the impugned order, rejecting the benefits of General Provident Fund, Special Provident Fund and also Encashment of Earned Leave Salary, is bad in law and the same is required interference.



7.Mr.G.Arjunan, learned Government Advocate appearing for the respondents on the other hand would submit that, the petitioner has involved in serious crime, therefore, the criminal case is pending before the concerned criminal Court and unless and until the trial is over and the decision in the criminal case is decided, as to whether the petitioner can be permitted to retire or not cannot be decided. Therefore, at this juncture, the prayer sought for herein cannot be granted.

8.I have heard the submissions made by both the learned counsel and perused the materials placed on record.

9.As has been rightly pointed out by the learned counsel appearing for the petitioner, the issue raised in this Writ Petition is no more *res integra* as numerous judgments have been passed, constantly by this Court, where both the Division Benches as well as Single Benches have passed numerous orders on this point, as to whether the Government employee whether retired or in service, facing any disciplinary proceedings independently or pursuant to the pendency of the criminal case, would be entitled to get service benefits i.e., General Provident Fund, Special Provident Fund and also Encashment of Earned Leave Salary and the answer was in the affirmative that they are entitled to get the same.

10.The judgments have been made by this Court to the extent that even the employee was dismissed from service, nevertheless he would be entitled for those benefits. When that being so, the present impugned order made by the first respondent as communicated by the third respondent certainly would not be sustainable. Therefore, this Court has no hesitation to hold that the impugned order is liable to be quashed, accordingly, it is quashed. The matter is remitted back to the respondents for re-consideration. While re-considering the same, by taking into account the aforesaid judgments, the said benefits, namely, General Provident Fund, Special Provident Fund and also Encashment of Earned Leave Salary, payable to the petitioner shall be calculated and paid to the petitioner, within a period of eight (8) weeks from the date of receipt of a copy of this order.

11.With these observations and directions, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(AS)

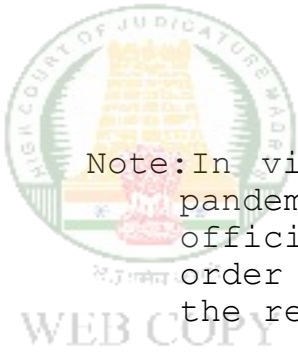
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Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



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 Director,
Department of Employment and Training,
(Employment Wing), Guindy,
Chennai-600 032.
2. The Regional Joint Director of Employment,
K.Pudur, Madurai-625 007.
3. The District Employment Officer,
District Employment and Career Guidance Centre,
Sivagangai.

+1 CC to M/s.GP (SR-16854[F] dated 15/09/2020)

Order made in
W.P. (MD) No. 11473 of 2020
11.09.2020

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SVN(CO)
TR(21.10.2020) 5P 5C