



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.11699 of 2020

J.Udhayakumar

... Petitioner

Vs.

1) The Agricultural Production Commissioner
and Principal Secretary to Government,
Agriculture Department,
Secretariat, Chennai 600 009

2) The Director of Marketing and Agri Business,
Cipet, Guindy, Chennai 600 032

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling the records of the first respondent relating to Government in Letter No.2087/AA8/2020-2 Agriculture (AA8) Department, dated 16.03.2020 of the Agricultural Production Commissioner and Principal Secretary to Government, Agriculture (AA8) Department, Chennai and quash the same relating to sanction of Encashment of Leave Salary and Special Provident Fund alone and consequently direct the first respondent to disburse the Encashment of Leave Salary and Special 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.A.Thiyagarajan,
Government Advocate

O R D E R

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, to call for the records of the first respondent, dated 16.03.2020 of the Agricultural Production Commissioner and Principal Secretary to Government, Agriculture (AA8) Department, Chennai and quash the same and for a consequential direction to the first respondent to disburse the Encashment of Leave Salary and Special Provident Fund of the petitioner.

2. The petitioner was serving as Deputy Director of Agri Business, Thiruchirapalli and Special Officer cum Secretary, market Committee, Thiruchirapalli.



3. When he was working, he was placed under suspension by G.O. (3D) No.200 Agriculture (AA2) Department, dated 13.09.2011 as he was arrested in connection with the criminal case, where he had been in judicial custody from 03.08.2011, under Prevention of Corruption Act.

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4. While so, when the petitioner was under suspension, he reached the superannuation age on 31.03.2016. However, on that date, he was not permitted to retire and an order to that effect was passed in G.O.(3D) No.75 Agriculture (AA2) Department, dated 31.03.2016. Thereafter, it seems that, the charge sheet has been filed before the Criminal court. However, the trial is pending.

5. After rendering 36 years of service, the petitioner reached the age of superannuation in the year 2016. As he was not permitted to retire, he is unable to get any retirement benefits, including pensionary benefits and in this regard, it is the grievance of the petitioner that, though the petitioner is not entitled to regular pension, DCRG and commutation of pension, because of the orders passed by the Government, not allowing the petitioner to retire, as he was placed under suspension pending criminal case against him, however, he shall be entitled to get the Special Provident Fund of his own contribution and encashment of leave salary.

6. In this context, the petitioner has given a representation to sanction the said two benefits, i.e. the Special Provident Fund and encashment of Leave Salary. However, the same was not immediately considered. When the petitioner had approached this Court and got an order of Writ of Mandamus from this Court in W.P. (MD) No.26180 of 2019 by order, dated 10.12.2019, considering the same or pursuant to which, the respondents i.e. the first respondent, now, has passed the impugned order in letter no.2087/AA8/2020-2, dated 16.03.2020 wherein the request of the petitioner for disbursement of Special Provident Fund as well as Earned Leave Salary was rejected by quoting Rule 21 and Rule 40 of Tamil Nadu Pension Rules, 1978 as well as Fundamental Rules 86(a)1 and 7(1) of Tamil Nadu Leave Rules 1933. Aggrieved over the said order and challenging the same, the petitioner has moved this writ petition with the aforesaid prayer.

7. Heard Mr.S.Visvalingam, learned counsel appearing for the petitioner, who would submit that, the issue raised in this writ petition has already been decided in a number of cases and he has quoted the following judgments of the Division Bench, which have been very recently passed.

(i) W.A.(MD) Nos.68 of 2014 and 769 of 2018 dated 26.02.2020 in the matter of **State of Tamil Nadu represented by its Secretary to Government vs., R.Balakrishnan;** and



**(ii) W.A. (MD) No.626 of 2019 dated 26.02.2020 in the matter of
*Director General of Police, Mylapore vs., P.Veeranan***

8. Citing these decisions and so many other orders passed by this Court, learned counsel appearing for the petitioner would submit that, it has been categorically held in a number of cases, including the aforesaid recent Division Bench judgments of this Court that, the Provident Fund and Earned Leave Encashment, which are payable to the Employees under Rule 53(1) of the Fundamental Rules, cannot be withheld and it shall be paid and disbursed.

9. Despite these categorical decisions made time and again, now, by quoting the wrong rule or by giving wrong interpretation, the first respondent has passed the impugned order, dated 16.03.2020. Therefore, the same cannot be sustained in the eye of law. Hence, the learned counsel seeks indulgence of this Court against the impugned order.

10. Heard Mr.A.Thiyagarajan, learned Government Advocate for the respondents, who would submit that, against the petitioner, a criminal case has been registered by the Vigilance and Anti Corruption Department, where a charge sheet has been filed before the concerned criminal court and the case is pending.

11. In view of the said pendency of the criminal case, the petitioner was not permitted to retire on his superannuation i.e. on 31.03.2016 by issuance of Government Order in G.O.(3D)No.75 Agriculture (AA2) Department, dated 31.03.2016.

12. When that being the position, unless and until the criminal case pending against the petitioner is decided one way or other, where, the petitioner is able to come out successfully by proving his innocence, he would not be permitted to retire and at the end, based on the decision to be made by the criminal Court, even the Department may take a decision to dismiss the petitioner, if the petitioner gets conviction and in that case, the petitioner would not be entitled to get any retiral benefits. Therefore, in that context, in consonance with the Rules quoted in the impugned order i.e Rules 21 and 40 of Tamil Nadu Pension Rules, 1978 and Rule 86(a)1 of Fundamental Rules and 7(1) of Tamil Nadu Leave Rule 1933, the petitioner may not be entitled to get the benefits like Special Provident Fund as well as the surrender of Earned Leave. Therefore, only after considering all the Rule position and factual aspects of the case, the impugned order has been passed by the first respondent. Hence, the said order can very well be sustained and it does not require any interference of this Court, the learned Government Advocate contended.

<https://hcservices.courts.gov.in/hcservices> 13. I have considered the rival submissions made by the



learned counsel appearing for the parties and perused the materials placed before this Court.

14. 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.

15. Many number of orders have been passed by this Court in the yester years and the learned counsel for the petitioner is able to produce two recent orders passed by the Division Bench of this Court referred to above. In W.A.(MD) Nos.68 of 2014 and 769 of 2019 dated 26.02.2020, a Division Bench of this Court has passed the following orders:-

"10. A Division Bench of this Court in the case of the Chief Secretary to Government, Public (Special - A) Department, Fort St. George, Chennai Vs. M.Uthiraswamy, [W.A.No.4018 of 2019], decided on 22.11.2019, after considering various judgments of this Court and the Hon'ble Supreme Court, has held as under:

"16. Employees contribution to Provident Fund and leave which has been earned by him (not encashed) are the property of the employee, they cannot be taken away, without due process of law, as enshrined, under Article 300-A of the Constitution of India. There is nothing in the Rules which has been relied by the learned Government Pleader which will enable the Government to withhold the Employee's own contribution to Provident Fund and encashment of accumulated earned leave when the Government servant has attained the age of superannuation. These amounts have to be given to the Government servant, even if the criminal proceedings culminate against the Government servant and the Government servant is terminated from service. If these amounts cannot be forfeited even on termination, there is no justification in withholding the same during the continuation of criminal proceedings after the Government servant has attained the age of superannuation."

11. Further, Rule 53 of the Fundamental Rules states that the Government Servant, who deemed to have been placed under suspension, shall be paid subsistence allowance. The proviso to Rule 53(1) of the Fundamental Rules states that if the Government Servant continuous to be under suspension even after the date of retirement, the amount of subsistence allowances shall be reduced to the amount of pension, which will be provisionally admissible to him, whether



or not, the Government Servant is exonerated from the charges for which he was placed under suspension. Rule 53(1) of the Fundamental Rules is reproduced hereunder:

"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.

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

12. In view of the above, the respondent/petitioner, therefore, entitled to the allowances, which is payable to him under Rule 53 of the Fundamental Rules. We, therefore, direct the State Government/appellants to forthwith release the contribution of the respondent/petitioner to the Provident Fund and also the Earned Leave Encashment, which is payable to the respondent/petitioner under 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.

13. The impugned order is set aside and the Writ Appeals are disposed of, with the above direction. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

16. On the very same day, yet another order was passed by the Division Bench in W.A.(MD) No.626 of 2019.

17. I had an occasion to consider a similar issue in W.P.(MD) No.7834 of 2020, on 22.07.2020 in **A.Pauldurai vs. the District Collector and another**, where I have passed the following order:

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.

<https://hcservices.ecourts.gov.in/hcservices> 9. Since the issue raised in this Writ



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."

18. When that being the legal position, which has been settled, the issue cannot once again be reopened, as has been interpreted by the first respondent through the impugned order.

19. The Rule quoted in paragraph no.6 of the impugned order may not be applicable for payment or disbursement of Provident Fund or Special Provident Fund as well as surrender of or Encashment of Surrender Leave salary.

20. When that position has been clarified by the Division Bench by quoting Fundamental Rule 53 as has been quoted above, this Court has no hesitation to hold that, the said reason cited in the impugned order, especially at paragraph no.6 of the impugned order, does not hold good and therefore, for the said reasons, the impugned order cannot be sustained.

21. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders :

"that the impugned order is quashed and the matter



is remitted back to the respondents for reconsideration. While reconsidering the same, the first respondent shall consider the judgments quoted above extensively and accordingly pass revised order, sanctioning the special Provident Fund amount, accrued on the account of the petitioner as well as the entitlement of encashment of surrender leave salary on the account of the petitioner and accordingly, calculate and disburse the same to the petitioner within a period of eight weeks from the date of receipt of a copy of this order."

22. With these directions, the writ petition is ordered accordingly. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

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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:

- 1) The Agricultural Production Commissioner
and Principal Secretary to Government,
Agriculture Department,
Secretariat, Chennai 600 009
- 2) The Director of Marketing and Agri Business,
Cipet, Guindy, Chennai 600 032

Order made in

W.P. (MD)No.11699 of 2020

Dated:

15.09.2020

CK (CO)

KM (23.11.2020) 9P 3C