BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :**02.12.2020**

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THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

W.P.(MD) No.17400 of 2020

A.T.Pachamal ... Petitioner

Vs

The District Collector,
Ramanathapuram District,
Ramanathapuram. ... Respondent

PRAYER: This Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Mandamus, to direct the respondent i.e., the District Collector, Ramanathapuram, to take immediate action for disbursement of the Encashment of Leave Salary and Special Provident Fund No.I and II to the petitioner within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam
For Respondent : Mr.K.P.Narayanakumar
Special Government Pleader

ORDER

This Writ Petition is filed to direct the respondent to take immediate action for disbursement of the Encashment of Leave Salary and Special Provident Fund Nos.I and II to the petitioner.

2.By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

3.The learned counsel appearing for the petitioner would submit that the petitioner was working as Block Development Officer (Village Panchayat) at R.S.Mangalam Panchayat Union, Ramanathapuram District. Since the petitioner was attaining the age of superannuation, he was not permitted to retire from service and thereafter, he was placed under suspension, vide order dated 28.06.2019. He would further submit that a case in Cr.No.3 of 2018, which was filed as against the petitioner, is also pending before the learned Chief Judicial Magistrate, Ramanathapuram and that therefore, disciplinary action has been initiated against the petitioner under Rule 17 (b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules.

4.It is the contention of the learned counsel appearing for the petitioner that though the petitioner was placed under suspension and a case is pending against him, he is entitled to get the encashment of leave salary and special provident fund Nos.I and II, which cannot be denied even on the ground of removal or dismissal from service. In support of his contention, the learned counsel would rely upon the judgment of the Hon'ble First Bench of this Court in W.A.(MD) Nos.68 of 2014 and 769 of 2018, dated 26.02.2020, wherein, this Court has held as follows:-

> "9. The impugned judgment is contrary to Rule 56 (1) (c) and therefore cannot be sustained and has to be set aside. We are informed that the Government has yet not released the contribution of the respondent to the provident fund and has also not paid the earned leave due to him. It is settled law that the State Government cannot withhold the contribution of an employee to his Provident Fund and the Earned Leave Encashment, which the employee is entitled to receive on attaining the age of superannuation, even if the employee is convicted in a criminal case or is prevented from retiring because of the pendency of the disciplinary or criminal proceedings.
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> ***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:*
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> > *"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:-*
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> *(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:*
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> *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:-*
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> *(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;*
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> *(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;*
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> *(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."

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.

5.The learned counsel would further submit that by referring the aforesaid judgment, though the petitioner has made a representation dated 22.09.2020 to the respondent with the relief sought for in the prayer, so far no action has been taken. Hence, left with no other alternative, the petitioner is before this Court for the relief stated supra.

6.Mr.K.P.Narayanakumar, learned Special Government Pleader appearing for the respondent would fairly submit that the petitioner's representation, dated 22.09.2020 would be considered on merits and in accordance with law, within a period of eight weeks.

7.Recording the submission made by the learned Special Government Pleader and in view of the settled principle of law, this Court is inclined to pass the following direction:-

the respondent is directed to consider the petitioner's representation dated 22.09.2020 and pass appropriate orders, in the light of the judgment passed by the Hon'ble First Bench of this Court in W.A.(MD) Nos.68 of 2014 and 769 of 2018, dated 26.02.2020, within a period of eight weeks from the date of receipt of a copy of this order;

8.With the above directions, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /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 Collector,
Ramanathapuram District,
Ramanathapuram.

+1 CC to the SPL GP (SR-24102[F] dated 04/12/2020)

W.P.[MD]No.17400 of 2020
02.12.2020

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