IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

WRIT APPEAL NO.269 OF 2020
AND
C.M.P.NO.4450 OF 2020

The Superintending Engineer,
CEDC/South/K.K.Nagar,
Tamil Nadu Electricity Board,
Chennai - 600 078. ... Appellant/Respondent

.Vs.

A.Venkatesan ... Respondent/Writ Petitioner

PRAYER:-

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 22.10.2019 passed by this Court in W.P.No.16198 of 2019.

PRAYER IN W.P.NO.16198 OF 2019:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent to disburse the petitioners retirement benefits like Gratuity, Encashment of Earned Leave and Encashment of Un Earned Leave on private affairs to the petitioner. (Prayer amended as per order dated 01/10/2019 in W.M.P.No.19312 of 2019 in W.P.No.16198 of 2019 by MDIJ)

For Appellant : Mr.P.Subramanian
Standing Counsel

For Respondent : Mr.C.Prakasam

J U D G M E N T

S.VAIDYANATHAN,J.,
AND
A.A.NAKKIRAN,J.,

This Writ Appeal is directed against the order dated 22.10.2019 passed by this Court in W.P.No.16198 of 2019, granting the relief of terminal and retirement benefits, including Pension and Gratuity to the Writ petitioner/ Respondent herein.

2. According to the Appellant, the Respondent, who was working as Junior Engineer Grade-I, was placed under suspension on the allegation that he had demanded and accepted illegal gratification and he was not permitted to retire from service, on account of pendency of Criminal/contemplated Departmental proceedings, vide order dated 20.08.2018. It is submitted that the Respondent had previously filed a Writ Petition in W.P.No.13699 of 2018, questioning his suspension and this Court interfered with the order of suspension vide order dated dated 25.02.2019, by observing that Departmental Proceedings can go on dehors the pendency of the criminal proceedings. This Court also directed to conclude the Departmental Proceedings independently on merits, based on the available documents. It is further submitted that the Respondent attained the age of superannuation on 31.08.2018 and was not permitted to retire from service. Thereafter, the Respondent initially claimed all the terminal benefits including gratuity, pension etc. and based on the Board proceedings dated 06.11.1996, all the Terminal benefits have been extended to the Respondent except pensionary benefit and Gratuity. The relevant portion of the proceedings, dated 06.11.1996, is extracted hereunder:

> “3. The Tamil Nadu Electricity Board, after careful consideration has decided to adopt the orders of the Government and issues the following orders:
>
> (a) At the time of retirement, 50% of unearned leave on private affairs standing to the credit of the employees, upto a maximum of 90 days be entitled for encashment and drawal of full leave salary. As far as the categories of Office Helpers, Duffadars and certain categories of workmen covered by the Standing Orders in respect of workmen other than those engaged in clerical works, encashment of 50% of leave on private Affairs will be subject to

the eligibility of Unearned Leave on Private Affairs specified in B.P.No.(FB) No.94 (S.B.), dated 20.11.85.

The Pay drawing officers shall draw the leave salary towards encashment of leave on leave on Private affairs as in the case of encashment of earned leave.

(b) Full leave salary including Dearness Allowance and all other allowances normally admissible while going on leave during service be allowed for the entire period of earned leave encashment subject to a maximum of 240 days at the time of retirement.

4. the orders issued in paragraph 3 above shall also apply in the following categories of employees:-

a) those retiring on medical invalidation

b) those retrenched from Board's service

c) those permitted to retire from service without prejudice to the disciplinary proceedings pending against them.

d) In the case of death of an employee while in service

e) to those going on Voluntary retirement, and

f) those sent on compulsory retirement

5. The orders in paragraphs 3 and 4 above shall take effect from 1.7.96.”

3. It is also submitted by the Appellant that in terms of the Board proceedings, the respondent was not allowed to retire and therefore, he is not entitled to the get the pensionary benefits and gratuity. In the interregnum period, the respondent has filed the present Writ Petition in W.P.No.16198 of 2019 for a suitable direction to extend the pensionary benefits.

4. It is brought to the notice of this Court by the learned counsel for the Appellant that the Writ Petitioner has not sought for gratuity and pension in the Writ Petition. However, the learned single Judge, on erroneous consideration, has granted gratuity and other pensionary benefits and therefore,

the order of the learned Single Judge, granting gratuity and pension needs interference by this Court. Leaned counsel for the Appellant, in support of his submission, relied upon a judgment of this Court in the case of The Secretary to Government, Revenue Department and Others vs. K.Palaniyandi reported in 2019 (5) CTC 19, wherein it was held as under:

> "15. There are two types of monetary benefits payable to a Government Servant on retirement. One type of such benefits, such as Earned Leave, Provident Fund and Special Provident Fund amount, is a benefit already accrued and got credited to the account of the employee, which he is entitled to receive automatically on attaining superannuation. Those amounts become his personal property. It makes no difference even if he is not permitted to retire and a departmental proceedings is initiated against him. In other words, those amounts are derived out of like his "savings" and therefore, the employer cannot stake any claim or impose any restriction as to when such amount could be paid to the employee even after attaining the age of superannuation. In other words, even as per rules, these amounts are payable either on the date of superannuation or on the date of termination of extension of service. Such payment is to be made even to a person dismissed from service. When such being the position, there cannot be any justification on the part of the employer to retain the said sum by citing the pendency of proceedings.
>
> 16. The other type of monetary benefit payable to an employee on his retirement, such as pension, gratuity etc., is certainly not liable to be paid automatically on the person attaining superannuation, if the said person is not permitted to retire and on the other hand, proceedings are initiated against him and the same is pending. The outcome of such proceedings will certainly have a bearing on the entitlement to get or liability to pay such amount. Therefore, the person, who attained the age of superannuation and not to allow retire, based on pendency of the disciplinary proceedings, cannot expect the employer to make the payment of pension and gratuity etc., even before the proceedings gets terminated, since such liability is depending upon the outcome of such proceedings."

5. To the contrary, learned counsel for the Respondent herein/Writ Petitioner contended that it is incorrect to state that he has not sought for the the relief of gratuity and other pensionary benefits, but however, he is not pressing the said relief at this moment in the present case on hand.

6. Heard the learned counsel appearing on either side and perused the material documents available on record.

7. On perusal of the documents, it is seen that the Respondent/writ petitioner has been facing disciplinary proceedings for which he has been suspended from service and thereafter, it was set aside. Subsequently, there was an initiation of Departmental Proceedings and in the meanwhile, he attained the age of superannuation on 31.08.2018. As per the Board proceedings dated 06.11.1996, referred to by the Appellant, the respondent will not be entitled to pension and gratuity. Though the Apex Court in the case of State of Jharkhand and Others vs. Jitendra Kumar Srivastava and Others, reported in 2013 (12) SCC 210, held that even a part of pension or gratuity cannot be withheld, in recent cases in Steel Authority of India Ltd., vs. Raghbendra Singh and Others (MANU/SCOR/46090/2020) and Chairman-cum-Managing Director, Mahanadi Coalfields Limited vs. Rabindranath Choubey, reported in AIR 2020 SC 2978, it was observed that the employer has a right to withhold gratuity during pendency of the disciplinary proceedings and that the gratuity amount can be adjusted to recover the amount.

8. If the order of the learned Single Judge is tested in line with the aforesaid decisions of the Supreme Court, a portion of the order of the learned Single Judge, insofar as it grants gratuity and other pensionary benefits, is liable to be interfered with and the order needs slight modification. Accordingly, the order of the learned Single Judge in respect of pension and gratuity alone is set aside. The rest of the orders remains unaltered

9. With the above modification, this Writ Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vum

To

The Superintending Engineer,
CEDC/South/K.K.Nagar,
Tamil Nadu Electricity Board,
Chennai - 600 078.

+1cc to Mr.P.Subramanian, Advocate, S.R.No.46818
+1cc to Mr.C.Prakasam, Advocate, S.R.No.47027

WRIT APPEAL NO.269 OF 2020 AND
C.M.P.NO.4450 OF 2020

VGII(CO)
PBS/08/12/2021