IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.7.2021

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.3890 of 2020
and
W.M.P. No.4615 of 2020

T. Baskar ...Petitioner

Vs.

1. The Secretary to Government,
   Revenue Department, Secretariat
   Chennai.

2. The District Collector,
   Thiruvallur District
   Thiruvallur ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the record of the impugned order issued by the 2nd respondent vide proceeding RC No.132/2019/A3 dated 31.01.2019 quash the same and consequently directing the respondents to allow the petitioner to retire from the service and pay the terminal benefits for the service.

For Petitioner : Mr. K. Venkataramani
for Mr. M. Jagadeesan

For Respondents : Mr. K.V. Sajeev Kumar
Government Counsel.

ORDER

The petitioner herein, while serving as a Tahsildar in the Ambattur Taluk, is said to have involved in Vigilance and Anti Corruption, owing to which, he was served with the suspension order dated 30.01.2019 and not permitted to retire. The retirement and other monetary benefits were not disbursed to the petitioner herein. Challenging the order of suspension, the present Writ Petition has been filed.

2. The learned Senior Counsel appearing for the petitioner submitted that though the respondents would be entitled to retain the retirement benefits such as gratuity, there is no authority vested in them to withhold the permissible benefits such as encashment of Earned Leave, General Provident Fund, Special Provident Fund, etc. The learned Senior Counsel also submitted that though the order of suspension was made on the last date of his service i.e. 30.01.2019, no criminal case has been registered against the petitioner and the respondents have also not initiated any disciplinary action till date. Since more than 2-1/2 years have passed, the learned Senior Counsel sought for intervention in the suspension order.

3. Per contra, the learned Government Advocate submitted that the investigation into the criminal case was started even three months prior to the retirement of the petitioner and since the same was pending with the Investigation Agency, the respondents thought it fit to place the petitioner under suspension since the petitioner has been implicated with the case of corruption, which is grave in nature.

4. Insofar as the disbursement of the permissible retirement benefits applicable to the Government employee when the departmental action is pending and the employee is not permitted to retire, the issue has come up for consideration before this Court on various occasions, whereby it was held that some of the benefits, such as encashment of Earned Leave, Employees' contribution of the Provident Fund, Special Provident Fund, etc., were deemed to be the property of the employee, which the Government has no authority to withhold. In one such case, which came up for consideration before the Hon'ble Division Bench in the case of Secretary to Government, Chennai and others vs. K. Palaniyandi passed in W.A.(MD) No.105/19, the Division Bench had taken into account various other similar orders passed and had ultimately held that the Governmental authorities have no right to withhold the permissible monetary benefits, such as encashment of Earned Leave, General Provident Fund, Special Provident Fund, etc. The relevant portion of the order reads thus:

> "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.

17.Next contention of the appellants is in respect of Rule 7 of the Tamil Nadu Leave Rules, 1933. A careful perusal of the Rule 7 of the said Rules would again show that even the Government Servant, who is terminated from service or compulsorily retired from service as a measure of punishment, is also entitled for encashment of Earned Leave and leave on private affairs. Therefore, the entitlement of such Government Servant to encash such Earned Leave and leave on private affairs is not altered even assuming that he is punished by way of termination of his service. Therefore, we find that the contention raised by the appellants on this ground is also liable to be rejected.

18.It is to be noted at this juncture that there is no total prohibition or denial of the benefit sought for by the writ petitioner in any of the provisions made under the relevant rules. It is only a time of disbursement of such benefit is stated. Even as per the rules, these benefits sought by the writ petitioner become payable automatic at the relevant point of time. Therefore, when the entitlement for such payment is not in question and only the time of disbursement is postponed under a given circumstance, especially when the retention of those benefits is not having a bearing on any eventuality, the Court can interfere and direct such payment even before the relevant time for disbursement of such payment, when the beneficiary seeks to get the same immediately. When the entitlement is not in dispute, it makes no difference whether it is paid at the request of the beneficiary or at a latter date viz., relevant time, at which, it is liable to be paid.

19.The learned Single Judge of this Court in a decision reported in 2016(1) LLJ 730 (Mad) (cited supra) has dealt with the above issue and found at paragraphs 15 and 16 as follows:-

> " 15. On the other hand, if an employee has chosen to accumulate his earned leave to his credit, the encashment of the same cannot be deprived on the dismissal, since his Earned Leave to his credit is nothing but his property as held by the Full Bench of the Punjab and Haryana High Court.
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> 16. Likewise, in this case, the issue is only relating to payment of Earned Leave Encashment Benefit. The same principle that is applicable to Earned Leave Encashment Benefit is also applicable to the payment of General Provident Fund and to the contribution made by a Government employee to Special Provident Fund. In the case of industrial employees, the contribution made by the industrial workman to the Provident Fund from his wages could not be deprived by the employer even if he is dismissed from service."

20. The said decision was approved by the Division Bench of this Court in W.A(MD)No.1423 of 2018 dated 22.10.2018, wherein the Division Bench has observed as follows:-

> "Challenging the order of the learned Single Judge, by which the retiral benefits were sought to be disbursed to the respondent by the appellants notwithstanding the pendency of the criminal case, pending on the date of superannuation, the present appeal has been filed.
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> 2.The learned Special Government Pleader appearing for the appellants would submit that the order of the learned Single Judge cannot be sustained in the eye of law as the respondent was not permitted to retire, pending criminal case.
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> 3.The learned Counsel appearing for the respondent would submit that the encashment of earned leave is acquiring a property owned by a person and therefore, notwithstanding the order of dismissal, the same cannot be denied. Reliance has been made on the order of the learned Single Judge in T.Veeravinothan Vs. Registrar of Co-operative Societies, Kilpauk, Chennai and others reported in 2016-1-LLJ-730 (Mad), wherein it has been held as follows:
>
> > "15.On the other hand, if an employee has chosen to accumulate his earned leave to his credit, the encashment of the same cannot be deprived on the dismissal, since his Earned Leave to his credit is nothing but his property as held by the Full Bench of the Punjab and Haryana High Court."
>
> 4.Considering the above, we are of the view that the order of the learned Single Judge giving a direction to the respondents to disburse all the benefits cannot be sustained, except to the extent of payment of earned leave salary alone. In the light of the decision supra, the

encashment of earned leave is to be treated as a property owned by a person even one assumes a worst situation by which the employee is dismissed.

5.In such view of the matter, this Writ Appeal stands allowed in part. Accordingly, the appellants are directed to release the earned leave salary of the respondent within a period of eight [8] weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed."

21. The another Division Bench of this Court in W.A.No.207 of 2016 dated 26.02.2016, has considered the very same issue and observed as follows:-

"The instant intra-court appeal arises from the order dated 2nd June, 2015 made in W.P.No.15457 of 2015.

2. The writ petitioner, who is the respondent herein, filed the writ petition, seeking direction to the appellants herein to disburse his retirement benefits, such as gratuity, special provident fund, encashment of earned leave and unearned leave on private affairs.

3. The respondent herein working as Electrician in the Electricity Board was to retire on attaining the age of superannuation on 30th June, 2013. However, he was not permitted to do so on account of pendency of the criminal case under the provisions of the Prevention of Corruption Act, 1988.

4. The learned Single Judge, considering all aspects of the matter, held that the petitioner was having earned leave and unearned leave on private affairs before initiation of the case and as such, he is entitled to encashment of earned leave and unearned leave on private affairs. The claim of gratuity was given up by the

employee / writ petitioner on the ground that in the event of conviction and dismissal of service, the writ petitioner may not be entitled to get gratuity. The special provident fund was also not granted as the writ petitioner failed to establish any contribution made by him. While disposing of the writ petition, a direction was made to the appellants herein to disburse encashment of earned leave and encashment of unearned leave on private affairs. In respect of special provident fund, it was held that if any contribution was made by the writ petitioner, the same can be paid to the petitioner.

5. We do not find any error, illegality or infirmity in the order sought to be impugned in this writ appeal preferred by the Tamil Nadu Generation and Electricity Distribution Corporation Ltd., warranting interference. Thus, the writ appeal stands dismissed. No costs. Consequently connected miscellaneous petition stands closed."

22. The above said decision of the Division Bench was put to challenge before the Apex Court, which, inturn, dismissed the Special Leave Petition on 06.07.2017 by observing that no ground to interfere with the impugned order of the Division Bench.

23. In a recent decision of the Division Bench reported in 2019- Writ. L.R. 825 [State of Tamil Nadu vs. V.Mahalingam], the same issue was considered and it has been observed at paragraph 5 as follows:-

"5. Before proceeding further, it would be necessary to examine the nature and legal basis for payment of 'earned leave' to Government Servants. Rules 7 to 12 of the Tamil Nadu Leave Rules, 1933, contain the statutory provisions for earned leave. It could be seen from the aforesaid provisions that the leave account of every permanent Government Servant shall be credited with earned leave in advance in two instalments of fifteen days each on the first day of January and first day of July every year. The leave at the credit of a Government Servant at the close of the previous half year shall be carried forward to the next half year, subject to the condition that the leave so carried forward plus the credit for the half year do not exceed the maximum limit of 240 days. The said rules further provide that if the leave standing to the credit of the Government Servant is not taken within a year as per the Service Rules, it may be encashed or accumulated. 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 in 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 of extension of service, as the case may be. The removal of a Government Servant from service as a measure of punishment of 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.”
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> 24. Therefore, we find the present issue is also certainly similar to the one in the above cases and thus, we find that the order of the Writ Court in granting the relief to the writ petitioner need not be interfered with."

In the light of the above proposition laid down by the Hon'ble Division Bench, the claim of the petitioner that they would be entitled for receiving the permissible retirement benefits, seems to be acceptable.

5. Insofar as the second contention raised by the learned Senior Counsel that the order of suspension requires to be interfered with since 2-1/2 years have passed from the date of suspension and no departmental action has been initiated till date is concerned, the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291, has held that, in normal circumstances, whenever the charge sheet has not been laid within a period of three months, the suspension order can be interfered with. However, the order of the Hon'ble Supreme Court came to be distinguished by a Division Bench of this Court in the cases of R.Elumalai Vs. District Collector & others reported in 2020 SCC Online Mad 1472 and in D.Jawahar Vs. Chairman and others reported in 2020 SCC Online Mad 9400, holding that the case of of Ajay Kumar Choudhary v. Union of India, may not be applicable to the employees who have been implicated in the case pertaining to charges of corruption.

6. In the instant case, though the respondents claim in the counter affidavit that the petitioner was allegedly involving in a corruption case, they have not taken any steps till date to level any charges against the petitioner in this regard. As a matter of fact, it is claimed by the petitioner that even the investigating agency has not registered a criminal case against the petition herein. As such, keeping the petitioner under suspension for an indefinite period, without initiating any departmental action, does not seem either justifiable or reasonable. In this back ground, it would be appropriate to direct the second respondent herein to review the petitioner's order of suspension, for the purpose of revocation, in the light of the observations made by this Court.

7. At this juncture, the learned Senior Counsel appearing for the petitioner submitted that the petitioner is now aged about 61 years and he has also arranged the marriage of his daughter, for which he is in urgent need of funds for marriage expenses and therefore sought for expeditious disbursement of the retirement benefits. This Court is of the view that if the respondents are granted a limited period for the disbursement of the petitioner's eligible retirement benefits, the ends of justice could be secured.

8. Accordingly, the petitioner herein is granted liberty to make a comprehensive representation requesting for disbursement of the eligible retirement benefits together with a request for revocation of the suspension order to the second respondent and on receipt of the same, the second respondent herein shall consider the observations and findings made by this Court in the present order and in accordance with such observations, shall pass necessary orders on the petitioner's representation, at least within a period of two weeks from the date of receipt of representation from the petitioner.

9. With the above directions, this Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Bga

To

1. The Secretary to Government,
   Revenue Department, Secretariat
   Chennai.

2. The District Collector,
   Thiruvallur District, Thiruvallur

+1cc to Mr.Jegadeesan, Advocate, S.R.No.34439

W.P. NO.3890 of 2020

NRL(CO)
RGA(17/08/2021)