

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25.01.2021

JUDGMENT DELIVERED ON : 04.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

WRIT APPEAL NO.1363 OF 2019

AND

C.M.P.NO.9331 OF 2019

The Revenue Divisional Officer,
Ponneri, Tiruvallur District.

.. Appellant

Vs.

S.T.Rajendran, S/o T.Subramaniam

.. Respondent

Prayer:-

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 17.07.2018 passed by the learned Single Judge in W.P.No.28283 of 2017 on the file of this Court.

W.P.No.28283 of 2017:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorarified mandamus, calling for the entire records relating to the impugned order passed by the respondent in his proceedings Na.Ka.5397/2010/B1, dated 21.09.2017 and quash the same and consequently directing the respondent to disburse the Gratuity Special Provident Fund Encashment of Earned Leave and Encashment of Unearned Leave on private affairs to the petitioner.

For appellant : Mrs.A.Srijayanthi, Spl.G.P.

For respondent: Mr.C.Prakasam

JUDGMENT

R.SUBBIAH, J

This Writ Appeal has been filed by the Revenue Divisional Officer (for short, 'RDO'), Ponneri, Tiruvallur District, as against the order dated 17.07.2018 passed in W.P.No.28283 of 2017. By the said order dated 17.07.2018, the learned Single

Judge, while allowing the Writ Petition in part, had quashed the impugned order 21.09.2017 passed by the appellant with regard to the rejection of the prayer for release of General Provident Fund, Special Provident Fund and encashment of Earned Leave and Unearned Leave on Private Affairs. After quashing the order impugned in the writ petition, the learned single Judge directed the appellant to release the amount contributed by the respondent/writ petitioner for the General Provident Fund and the Special Provident Fund with accrued interest, encashed amount of Earned Leave and Unearned Leave on Private Affairs. The learned Single Judge also gave liberty to the appellant (employer concerned) to deduct the amount to which it is legally entitled to, within six weeks from the date of receipt of a copy of the order.

2. The brief facts which are necessary for disposal of the Writ Appeal are as follows:

(a) The respondent-writ petitioner was appointed as Village Administrative Officer (for short, 'VAO') in the year 1984. While he was discharging his duties as VAO at Elavur Village, Gummidipoondi Taluk, Tiruvallur District, he was suspended from service on 14.09.2010 on the allegation that he had issued spurious Chittas to the agriculturists to enable them to use them to obtain agricultural loan from Vishnuvakkam Primary Agricultural Co-operative Credit Society. The issuance of spurious Chittas had resulted in irregularities committed by the Society employees in regard to sanction of loan by the Society and thus it had caused huge loss to the Society. Apart from departmental action initiated against him, a criminal case had also been registered against him by the Superintendent of Police, Commercial Crime Investigation Wing, CID, Chennai-600 040, in Crime No.201 of 2011, in which the respondent/writ petitioner is arrayed as A4. Now, the said criminal case is under trial before the Judicial Magistrate-I, Tiruvallur. On account of the pendency of the said criminal case, the appellant had not disbursed the Gratuity, GPF, SPF, Encashment of EL and Encashment of UEL on Private Affairs to the respondent/writ petitioner. While so, on the date of his retirement on 30.04.2013, he was not allowed to retire and his retiral benefits were withheld due to the pendency of the criminal case. Hence, the respondent had filed the present Writ Petition in W.P.No.28283 of 2017 challenging the order passed by the appellant in the proceedings in Na.Ka.No.5397/2010/B1, dated 21.09.2017 and to quash the same and consequently direct the appellant to disburse the Gratuity, SPF, Encashment of EL and Encashment of UEL on Private Affairs to the respondent/writ petitioner.

3. The learned Single Judge allowed the Writ Petition in part as stated supra, against which, the present Writ Appeal is filed by the RDO.

4. The learned Special Government Pleader appearing for the appellant/RDO submitted that the respondent/writ petitioner had issued spurious Chittas to some of the agriculturists, and they have used the same to obtain agricultural loan from Vishnuvakkam Primary Agricultural Co-operative Credit Society and thus caused huge loss to the Government. In this regard, a criminal case was registered against the writ petitioner who is arrayed as A4 in Crime No.201 of 2011 and it is pending before Judicial Magistrate No.I, Tiruvallur. As per the charge against the accused in the criminal case, they have conspired together and misappropriated a sum of Rs.15,01,397/-. Since a huge amount is involved in the matter, even after retirement of the respondent/writ petitioner, recovery can be effected from the leave salary. Thus, the learned Special Government Pleader prayed for allowing the Writ Appeal and to dismiss the Writ Petition.

5. The learned counsel appearing for the respondent/writ petitioner submitted that the learned Single Judge has directed to release the amount only in respect of the contribution made by the writ petitioner, for which he is legally entitled to. Therefore, absolutely there is no infirmity in the impugned order passed by the learned Single Judge and the learned counsel appearing for the respondent/writ petitioner prayed to confirm the order passed by the learned Single Judge and dismiss the present Writ Appeal.

6. Keeping in mind the submissions made on either side, we have carefully perused the materials available on record.

7. The charge against the respondent/writ petitioner is that while working as Village Administrative Officer, he had issued spurious Chitta to ineligible person, based on which they have obtained loan from Vishnuvakkam Primary Agricultural Co-operative Credit Society and thus caused huge loss to the Government. In this connection, criminal proceedings was set in motion in which the respondent/writ petitioner was arrayed as A-4. The other accused in the criminal case are the officials of the society. The sum and substance of the charge against the respondent/writ petitioner and other accused in the criminal case is that they have conspired together and caused loss to the tune of Rs.15,01,397/- to the society. Therefore, according to the appellants, in the event of conviction of the

respondent/writ petitioner herein, in the criminal case, the amount misappropriated by the respondent/writ petitioner to the tune of Rs.15,01,397/- has to be recovered.

8. Such an argument advanced on behalf of the appellant cannot be accepted. It is evident that the respondent/writ petitioner alone has not misappropriated the sum of Rs.15,01,397/-, rather, the charge against the respondent/writ petitioner is that he was instrumental for the loss by entering into a criminal conspiracy along with other accused and thereby caused loss to the society. In that event, the amount recoverable from the respondent/writ petitioner will not be Rs.15,01,397/- and the loss amount or criminal liability has to be recovered from all the accused persons, subject to the result of the criminal case.

9. As far as the prayer sought for in the writ petition is concerned, the respondent/writ petitioner seeks for disbursement of Provident Fund, Special Provident Fund with accrued interest, encashed of Earned Leave and Unearned Leave on Private Affairs. The provident fund accumulation is based on the recovery made from the salary of the respondent/writ petitioner month after month during the course of his service. Similarly, the leave credited to his account was also based on the duration of the service rendered by the respondent/writ petitioner. Such benefits are accrued to the respondent/writ petitioner in the form of provident fund accumulation or earned leave, which arise out of the duration of service rendered by him. The disbursement of these benefits cannot be construed on par with the other benefits payable to the petitioner such as death cum retirement benefit, gratuity etc., on his retirement. Therefore, the prayer sought for by the respondent/writ petitioner has to be granted and the appellant must be directed to disburse the benefits payable to the writ petitioner such as General Provident Fund, Special Provident Fund and encashment of Earned Leave and Unearned Leave on Private Affairs. The learned single Judge also, considering the above, has rightly allowed the writ petition filed by the respondent/writ petitioner and we see no reason to interfere with the directions issued by the learned single Judge to the appellants herein. We make it clear that the appellant shall disburse the monetary benefits such as General Provident Fund, Special Provident Fund and encashment of Earned Leave and Unearned Leave on Private Affairs, to which the respondent/writ petitioner had contributed during the course of his employment, and not other financial benefits payable to him in the event of his retirement from service.

10. In the result, we confirm the order dated 17.07.2018 passed by the learned Single Judge in W.P.No.28283 of 2017. The Writ Appeal fails and it is accordingly dismissed. No costs. Consequently, C.M.P. is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

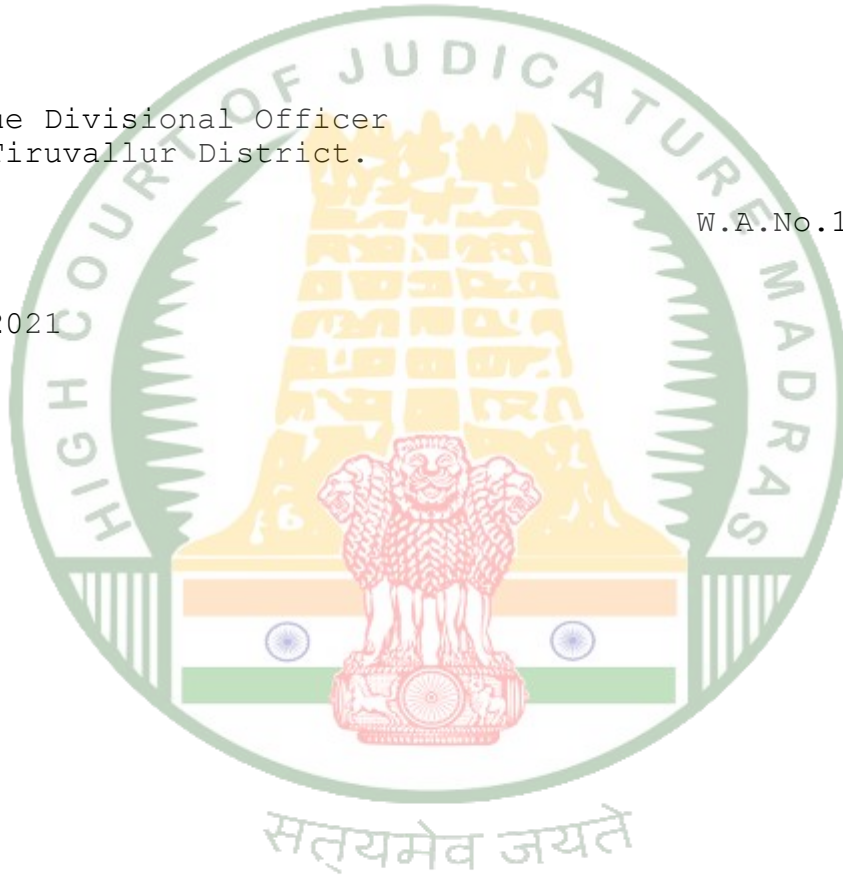
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To

The Revenue Divisional Officer
Ponneri, Tiruvallur District.

W.A.No.1363 of 2019

PPA(CO)
CS/10/02/2021



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