IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.02.2021
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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.6470 & 6619 of 2014

W.P.No.6470 of 2014

A.D.Dakshnimurthi ... Petitioner

Vs.

1. State of Tamilnadu,
   Rep. by its Secretary,
   Revenue Department,
   Fort St. George, Chennai - 600 009.

2. The District Collector,
   Namakkal.

3. The Revenue Divisional Officer,
   Tiruchengode.

4. The Inspector of Police,
   Vigilance and Anti Corruption, Salem.

5. The District Treasury Officer,
   Namakkal. ... Respondents

W.P.No.6619 of 2014

C.Karuppannan ... Petitioner

Vs.

1. State of Tamilnadu,
   Rep. by its Secretary,
   Revenue Department,
   Fort St. George, Chennai - 600 009.

2. The District Collector,
   Namakkal.

3. The Assistant Director of Survey and Land Records,
   District Survey Officer, Namakkal.

4. The Deputy Superintendent of Police,
   Vigilance and Anti Corruption, Namakkal.

5. The District Treasury Officer,
Namakkal. ... Respondents

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to disburse the death cum retirement gratuity of the petitioners unblemished service period within a stipulated period as fixed by this Court.

For Petitioners in Both WPs : Mr.R.Ezhilarasan
For Respondents in Both WPs : Mr.S.Thangavel, SGP

COMMON ORDER

These writ petitions have been filed to direct the respondents to disburse the death cum retirement gratuity to the petitioners within a stipulated period as fixed by this Court.

2.According to the learned counsel for the petitioners, the petitioners joined as Village Administrative Officer and Firka Surveyor respectively in the Revenue Department. While they were in service, they were subjected to criminal prosecution, for the alleged offences under sections 7 and 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, which culminated in SC.Nos.2/2010 and 51/2010, which are pending before the Chief Judicial Magistrate, Namakkal. However, no departmental proceedings were initiated against them. It is the grievance of the petitioners that though they reached the age of superannuation on 30.06.2013 and 31.12.2009 respectively, they have not been disbursed with the retirement benefits due to them. In this regard, they submitted separate representations dated 28.01.2014 and 24.01.2014 to the third respondent, which were not considered. Hence, the present writ petitions.

3.On the other hand, the learned Special Government Pleader appearing for the respondents reiterated the averments made in the counter affidavit filed by the respondents and submitted that the petitioners are not permitted to retire from service, as the criminal cases registered against them under the provisions of the Prevention of Corruption Act, are pending and hence, they are not entitled for retiral benefits.

4.Heard both sides and perused the documents placed before this Court.

5.Admittedly, the petitioners were charged for the alleged offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, due to which, they were placed under suspension in the year 2009. The criminal proceedings initiated against them, culminated in SC.Nos.2/2010 and 51/2010, which are pending before the Chief Judicial Magistrate, Namakkal. In view of the same, they are not permitted to retire from service, on reaching the age of superannuation, by invoking Rule 56(1)(c) of the Fundamental Rules.

6.In these writ petitions, the petitioners sought a mandamus to the respondents to disburse the retirement benefits due to them, as they attained the age of superannuation. Whereas according to the respondents, due to pendency of criminal cases, the petitioners are not permitted to retire from service and that, they are retained in service, in accordance with Rule 56 (1)(c) of the Fundamental Rules and hence, they are not entitled for any retiral benefits till the conclusion of the criminal proceedings.

7.The stand so taken by the respondents cannot be countenanced by this Court. Undoubtedly, the petitioners, who are retained in service as contemplated under Rule 56(1)(c) of the Fundamental Rules, are not entitled for their claims, on attaining superannuation, till the disposal of the cases filed against them. However, they are entitled to receive the Earned Leave Salary and Special Provident Fund, which are already accrued and accumulated in their account, as those benefits are properties of the petitioners, over which the respondents cannot stake any claim.

8.In a decision in T.Veeravinothan v. Registrar of Cooperative Societies, Kilpauk, Chennai [2016(1) LLJ 730], this Court has dealt with the same issue and observed 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."

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 it was observed that 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. The same view was expressed by another Division Bench of this Court in W.A.No.207 of 2016 dated 26.02.2016, which decision was put to challenge before the Apex Court, which, inturn, dismissed the Special Leave Petition in SLP No.16229 of 2016 on 06.07.2017 by observing that no ground to interfere with the impugned order of the Division Bench.

9.Following the aforesaid decisions, this Court directs the respondent authorities to pass appropriate orders, with respect to disbursement of Earned Leave Salary and General / Special Provident Fund, if not already settled to the petitioners, within a period of eight weeks from the date of receipt of a copy of this order.

10.Accordingly, both the writ petitions stand disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Secretary to Government,
Revenue Department,
Fort St. George, Chennai - 600 009.

2. The District Collector, Namakkal.

3. The Revenue Divisional Officer,Tiruchengode.

4. The Inspector of Police,
Vigilance and Anti Corruption, Salem.

5. The District Treasury Officer,
Namakkal.

6. The Assistant Director of Survey and Land Records,
District Survey Officer, Namakkal.

7. The Deputy Superintendent of Police,
Vigilance and Anti Corruption, Namakkal.

+1 cc to Government Pleader Sr.No. 5550

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GMI(CO)
A.SK(09.07.2021)