

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2021

CORAM:

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

W.A.No. 2497 of 2021
and
C.M.P. No.16237 of 2021

The District Collector,
Salem District, Salem.

...Appellant

Vs.

K.Sundari

...Respondent

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 02.03.2020 passed in W.P.No.767 of 2019.

prayer in W.P.No.767 of 2019 : Petition filed under Article 226 of the Constitution of India praying for issuance of writ of Mandamus directing the respondents to disburse the petitioners retirement benefits like general provident fund special provident fund encashment of earned leave and encashment of unearned leave on private affairs to the petitioner.

For Appellant : Mr. K. Tippusultan,
Government Advocate.

J U D G M E N T

(Judgment of the Court was delivered by S.VAIDYANATHAN,J)

The Writ Appeal is directed against the order dated 02.03.2020 passed in W.P.No.767 of 2019, in directing the Appellant to disburse the retirement benefits of the Respondent like contribution to the General Provident Fund as well as to the Special Provident Fund, Encashment of Earned Leave and Encashment of Un-earned Leave on private Affairs, as per her entitlement.

2. Mr.K.Tippusultan, learned Government Advocate appearing for the Appellant submitted that a Criminal case is pending against the Respondent/Writ Petitioner, on the file of Special Judge, Salem and therefore she was not permitted to retire from service on the date of superannuation i.e., on 30.09.2018 and

she was again placed under suspension with effect from 30.09.2018 and retained in service. He further submitted that as per the instructions of the Government Orders, the retirement benefits like encashment of Earned Leave and Unearned Leave could not be granted to the Writ Petitioner and only after the regulations of the period of suspension with reference to the finalization of the criminal case, the above benefits could be given, but the learned Single Judge has directed the Appellant to disburse the retirement benefits of the Respondent like contribution to the General Provident Fund as well as to the Special Provident Fund, Encashment of Earned Leave and Encashment of Un-earned Leave on private Affairs to the Writ Petitioner, which is unsustainable and therefore prays to set aside the order of the learned Single Judge.

3. The learned counsel appearing for the Respondent submitted that neither the criminal proceeding nor the disciplinary action, initiated against her has attained the finality and the Respondent/Writ Petitioner was continued to be under suspension.

4. Heard both sides. Perused the records .

5. A perusal of the order passed by the learned Single Judge dated 02.03.2020 made in W.P.No.767 of 2019, shows that the learned Single Judge, by relying upon the Judgment of the Division Bench of this Court in W.A.No.207 of 2016 dated 26.02.2016, has granted the relief stated supra. Further, this Court in similar circumstances has passed an order on 15.09.2021 in W.A.No.269 of 2020, by setting aside the order of the learned single Judge in respect of granting of Pension and Gratuity alone and has not interfered with the grant of other benefits.

6. In view of the same, we are not inclined to interfere with the order of the learned Single Judge. Further, it is made clear that disbursement of pension and gratuity is subject to the outcome of the criminal proceedings, pending against the Writ Petitioner.

7. Hence the present Writ Appeal stands dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

arr/shk

To

The District Collector,
Salem District,
Salem.

W.A.No. 2497 of 2021

VSN-II (CO)
RGA(07/01/2022)