IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21618 of 2021

(Through Video Conferencing)

V.Viswanathan ...Petitioner

Vs

1. The Commissioner of Revenue Administration,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The District Collector,
   Tiruppur District @
   Tiruppur - 641 604. ...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the second respondent herein passed in his Na.Ka.No.12147/2009/A7 dated 14.08.2021 rejecting the petitioner's request to disburse the eligible retirement benefits and quash the same and consequently direct the respondents herein to disburse the petitioner's retirement benefits such as DCRG of Rs.9,19,445/- Earned Leave encashment of Rs.5,00,152/- and unearned leave on private affairs of Rs.1,87,557/-.

For Petitioner : Mr.Ravi Shanmugam

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

The petitioner has challenged impugned order passed by the 2nd respondent insofar as seeks to reject the request of the petitioner for disbursal, such DCRG amounting to Rs.9,19,445/-, Earned Leave Encashment amounting to Rs.5,00,152/- and an earned leave on private affairs amounting to Rs.1,87,557/-.

2.It is submitted that even though the 2nd respondent has recommended for payment of the aforesaid amounts to the petitioner, the amounts have not been paid to the petitioner based on the instruction of teh 1st respondent.

3.Appearing on behalf of the petitioner, the learner counsel for the petitioner submits that the petitioner had earlier filed W.P.No.9250 of 2021 for a direction to the respondent to consider and pass appropriate orders on the representation dated 17.02.2021 of the petitioner.

4.It is submitted that the said Writ Petition was disposed on 21.4.2021, wherein it was observed that in a worst case scenario, at best, even if a government employee, is dismissed from service retired benefits cannot be denied. The learned counsel for the petitioner submits that there is no legal basis for the respondents to retain the aforesaid amounts.

5.It is submitted that the retention of the amount by the respondents was clearly in violation of the order passed by this court in the above Writ Petition. A reference was also made to the order dated 02.03.2020 in W.P.No.767 of 2019, wherein on an earlier occasion a direction was issued to disburse retirement benefits such as General Provident Fund, Special Provident Fund, Encashment of Earned Leave, Encashment of Unearned Leave on Private affairs, even though the petitioner then was under suspension and was not allowed to retire.

6.Opposing the prayer in this Writ petition, the learned Government Advocate for the respondent submits that the petitioner was placed under suspension as a criminal case is pending against the petitioner. It is therefore submitted that the above amounts cannot be sanctioned to the petitioner and therefore the present Writ petition is liable to be dismissed.

7.I have considered the arguments advanced by the petitioner and on behalf of the respondents. The petitioner was placed under suspension on 18.07.2009. Later, the District Collector, the 2nd respondent herein revoked the aforesaid order of suspension on 19.03.2014. Thereafter, the petitioner was placed under suspension once again on 31.01.2020 on the date of his attaining superannuation and not allowed to retire. It appears a Criminal proceedings pending against the petitioner. It appears no departmental disciplinary proceedings have been initiated against the petitioner so far.

8.The law on the subject is clear. Even if the petitioner is eventually dismissed from service in the departmental disciplinary proceedings or convicted in the criminal proceedings initiated against the petitioner, as an employer the respondents can have no lien over any other amounts of a delinquent employee, other than the DCRG.

9.Therefore, the impugned order seeking to deny the amounts other than DCRG to the petitioner is liable to be quashed as the petitioner is otherwise entitled to the same.

10.Under these circumstances, the present Writ Petition is partly allowed by directing the respondents to release the other terminal benefits of the petitioner, barring DCRG within a period of 8 weeks from date of receipt of this order.

11.Though, the petitioner was placed under suspension as early as July, 2009, it is not clear as to why the department has taken almost 11 years to initiate criminal proceedings against the petitioner and not initiated any departmental disciplinary proceedings against the petitioner.

12.Considering the fact that the petitioner has already attained the age of superannuation on 31.01.2020, the respondents are directed to initiate departmental disciplinary proceedings within a period of 3 months from date of receipt of this order, if same has not been initiated so far and endeavour to complete the said departmental disciplinary proceedings within a period of 12 months from date of receipt of a copy of this order. The respondent shall also try to expedite the criminal proceedings against the petitioner. The petitioner is directed to cooperate with the respondents.

13.This writ petition stands partly allowed with the above observations. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Revenue Administration,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The District Collector,
   Tiruppur District @ Tiruppur - 641 604.

+1cc to the Government Pleader, S.R.No.53218

W.P.No.21618 of 2021

VG-II[co]
NSK 23/11/2021