BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.01.2021
CORAM :
The Hon'ble Mr.JUSTICE M.M.SUNDRESH
AND
The Hon'ble Mrs.JUSTICE S.ANANTHI
W.A.(MD) No. 1033 of 2020
and CMP(MD) No. 5649 of 2020

1. The Secretary to Government,
Revenue Department,
Secretariat, Chennai - 600 009.

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

3. The District Collector,
Kanniyakumari District @ Nagercoil.
.. Appellants/Respondents

Vs

S. Jothindra Geeth Prakash .. Respondent/Writ Petitioner

PRAYER : Petition filed under Clause 15 of Letters Patent, to allow the writ Appeal and set aside the order dated 25.04.20219 made in W.P.(MD) No. 10090 of 2019 on the file of this Court.

Prayer in WP(MD). 10090/ 2019 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Mandamus, directing the first respondent i.e., the Secretary to Government, Revenue Department, Chennai to sanction the General Provident Fund, Special Provident Fund and Encashment of Leave Salary to the petitioner within a specified time frame that may be fixed by this Honourable Court.

For Appellants/Respondents : Mrs.J. Padmavathi Devi, Special Government Pleader

For Respondent/Writ Petitioner : Mr.S. Visvalingam

ORDER

[Order of the Court was made by **S. ANANTHI, J.**]

This writ appeal has been preferred by the appellants/respondents aggrieved over the order passed by the learned single Judge of this Court, dated 25.04.2019 in W.P.(MD) No.10090 of 2019, by which, the impugned order directing the first respondent to disburse the General Provident Fund, Special Provident Fund and leave salary to the petitioner. Challenging the same, the present appeal has been filed.

2. The learned counsel appearing for the respondent/writ petitioner submitted that the petitioner was served as District Adi Dravidar and Tribal Welfare Officer of Kanyakumari District @ Nagercoil and his date of superannuation was on 30.04.2007. He further submitted that he was not allowed to retire on the date of superannuation and placed under suspension as per G.O.(2D) No. 275 Revenue Department, dated 30.04.20107 on the ground that the Vigilance case registered against him is pending and the aforesaid criminal case is under trial.

3. Heard the learned Special Government Pleader appearing for the appellants.

4. Employees contribution to provident fund and accumulated earned leave are properties of the employees, they cannot be hold by the employer even if the employee is terminated from service. In this regard, the principles are well settled by this Court and Apex Court in several writ petitions.

5. The Division Bench of this Court in the case of the Chief Secretary to Government Public (Special - A) Department, Fort Saint George, Chennai Vs. M. Uthiraswamy, [W.A. No. 4018 of 219] decided on 22.11.2019] after considering various judgments of this Court and the Hon'ble Supreme Court, has held as under:

> *"16. Employees contribution to provident Fund and leave which has been earned by him (not encashed) are the property of the employee, they cannot be taken away, without due process of law, as enshrined, under Article 300-A of the Constitution of India. There is nothing in the Rules which has been relied by the learned Government Pleader which will enable the Government to withhold the Employee's own contribution to Provident Fund and encashment of accumulated earned leave when the Government servant has attained the age of superannuation. These amounts have to be given to the Government servant, even if the criminal proceedings culminate against the Government servant and the Government servant is terminated from service. If these amounts cannot be forfeited even on termination, there is no justification in withholding the same during the continuation of criminal proceedings after the Government servant hs attained the age of superannuation".*

6. Another Judgment passed by the Division Bench of this Court in W.A. No. 207 of 2016, dated 26.02.2016, has held as follows:

" *The learned Single Judge, considering all aspets 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 encshment of earned leave and unearned leave on private affairs. The claim of gratuity was given up by the employee/writ petitioner may not be entitled to get gratuity. The special provident fund was also not gratned 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".

The same was confirmed by the Apex Court in S.L.P. No.16229 of 2016 dated 26.02.2016. It is squarelly applicable to this case also.

7. As the leave salary is property to the employee and it cannot be hold by the employer. Regarding special provident fund, if any contribution made by the employee should be disbursed to the employee. Therefore, the respondent/writ petitioner is entitled to get special provident fund what he actually contribue and leave salary.

8. Finally, this writ appeal stands dismissed with direction to the appellants/respondents to disburse the amount as found above, within a period of Four Weeks from the date of receipt of a copy of the order. However there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

Note : *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

TO

1. The Secretary to Government,
   Revenue Department,
   Secretariat, Chennai - 600 009.

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

3. The District Collector,
   Kanniyakumari District @ Nagercoil.

+1 CC to M/s.S.VISVALINGAM,Advocate (SR-2295[F] dated 29/01/2021)

W.A.(MD) No. 1033 of 2020
27.01.2021

PM(CO)
KB(09.02.2021) 4P 5C