



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. 727 of 2020

and CMP(MD) No. 4292 of 2020

against WP(MD).No.3821 of 2019

WEB COPY

1. The Director of Social Welfare,
Panagal Building, 2nd Floor,
Jennis Road, Chennai - 600 015.
2. The District Social Welfare Officer,
Collectorate Complex,
Dindigul District, Dindigul. .. Appellants/Respondents

Vs

C. Indhira Gandhi .. Respondent/Writ Petitioner

PRAYER: Petition filed under Clause 15 of Letters Patent Act, to set aside the order, dated 26.02.20219 in W.P.(MD) No. 3821 of 2019 on the file of this Court.

Prayer in WP(MD). 3821/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the second respondent i.e. the District Social Welfare Officer, Dindigul to take immediate action to disburse the Encashment of Leave Salary and Special Provident Fund of the petitioner's own contribution to the petitioner.

For Appellants/Respondents : Mr.K.P. Krishnadoss,
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 26.02.2019 in W.P.(MD) No.3821 of 2019, by which, the impugned order directing the second respondent to disburse the leave salary and Special Provident Fund to the petitioner. Challenging the same, the present appeal has been

<https://hcservices.ecourts.gov.in/hcservices/>



2. The learned counsel appearing for the respondent/writ petitioner submitted that the petitioner was working as Social welfare extension officer, Batlagundu Panchayat Union Office, Dindigul District and by proceedings, dated 09.02.2017, she was kept under suspension on account of her involvement in a criminal case. He further submitted that since the writ petitioner was due to retire on 31.05.2017, by proceedings dated 16.10.2017, she was not permitted to retire.

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 granted 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 squarely applicable to this case also.

7. As the leave salary is property to the employee and it cannot be held 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 contribute and encashment of leave salary.

8. Finally, this writ appeal stands dismissed with direction to the appellants/respondents to disburse the amounts 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 (CS-II)

// 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 Director of Social Welfare,
Panagal Building, 2nd Floor,
Jennis Road, Chennai - 600 015.

2. The District Social Welfare Officer,
Collectorate Complex,
Dindigul District, Dindigul.

+1 CC to M/s.S.VISVALINGAM, Advocate (SR-2296[F] dated
29/01/2021)

W.A. (MD) No.727 of 2020
27.01.2021

KM(CO)
KB(08.02.2021) 4P 4C