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Order dated 26.08.2022
Writ Petition No.4503 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.4503 of 2018

and

W.M.P.No.5534 of 2018

K.V.Natarajan
S/o.K.Varadhan

... Petitioner

Vs.

1.The Chairman cum Managing Director,
Tamil Nadu Generation and Electricity
Distribution Corporation Ltd.,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai - 2.

2.The Superintending Engineer (O&M),
Tamil Nadu Generation and Electricity
Distribution Corporation Ltd.,
Tamil Nadu Electricity Board,
Krishnagiri Electricity Distribution Circle,
Krishnagiri, Krishnagiri District.

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the entire
records relating to the impugned order passed by the second respondent in



Order dated 26.08.2022
Writ Petition No.4503 of 2018

his letter No.00600/36/Ni.Pi.2/U.2/Ko.K.V.Natarajan/2018, dated 08.02.2018 and quash the same and consequently, direct the respondents to disburse the petitioner's retirement benefits like Special Provident Fund, Encashment of Earned Leave and Encashment of Unearned Leave on Private Affairs.

For Petitioner : Mr.C.Prakasam
For Respondents : Mr.P.Subramaniam,
Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the second respondent in his letter No.00600/36/Ni.Pi.2/U.2/Ko.K.V.Natarajan/2018, dated 08.02.2018 and quash the same and consequently, direct the respondents to disburse the petitioner's retirement benefits like Special Provident Fund, Encashment of Earned Leave and Encashment of Unearned Leave on Private Affairs.

2. The petitioner was appointed as Tester Grade-II on 20.06.1984 and subsequently, he was promoted and ultimately, he was working as Junior Engineer Grade - I at the respondent TANGEDCO.



Order dated 26.08.2022
Writ Petition No.4503 of 2018

WEB COPY

3. While so, there was a trap case against the petitioner by the Department of Vigilance and Anti-Corruption, pursuant to which, he was arrested and a criminal charge was framed against the petitioner. Ultimately, the criminal case ended in conviction against the petitioner. Though, as against which, the petitioner preferred an appeal, which is pending so far, pursuant to the conviction earned by the petitioner, the respondent employer had dismissed the petitioner from service.

4. After the petitioner was dismissed from service, the petitioner had requested the respondents to release the encashment of earned leave and encashment of unearned leave on private affairs as well as the employees contribution towards the provident fund and that request since was rejected through the impugned order dated 08.02.2018, challenging the same, the present writ petition has been filed.

5. In this context, Mr.C.Prakasam, the learned counsel appearing for the petitioner, by relying upon a Division Bench judgment of this Court dated 26.02.2016 in W.A.No.207 of 2016 in the matter of Chairman cum



Order dated 26.08.2022
Writ Petition No.4503 of 2018

Managing Director and others v. P.K.Panchaksharam, has submitted that as per the extant rule even the petitioner was dismissed from service based on the conviction he earned in the criminal case and though an appeal has been filed and it is pending, the petitioner is entitled only for encashment of earned leave and encashment of unearned leave as well as employee's contribution towards provident fund and not any other benefits like gratuity and pensionary benefits.

6. This has been reiterated by the said order of the Division Bench of this Court, where, learned counsel relied upon the following:

"4. The learned Single Judge, considering all aspects 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 encashment of earned leave and unearned leave on private affairs. The claim of gratuity was given by the employee/writ petitioner on the ground that in the event of conviction and dismissal of service, the 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."

7. Hence, the learned counsel appearing for the petitioner would



Order dated 26.08.2022
Writ Petition No.4503 of 2018

WEB COPY

submit that the rejection of the plea made by the petitioner through the impugned order is unlawful and unjustifiable and hence, it is liable to be interfered with, he contended.

8. On the other hand, the learned counsel appearing for respondents would submit that the petitioner has been convicted by the criminal Court, pursuant to which he was dismissed from service and hence, he would not be entitled for the retirement benefits. However, if he is entitled only for encashment of earned leave and encashment of unearned leave on private affairs and his contribution, if any, towards the provident fund that would be considered and a revised order would be passed by the respondents, he contended.

9. I have considered the rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

10. In view of the settled legal position where the petitioner though has been dismissed from service pursuant to the conviction earned by him



Order dated 26.08.2022
Writ Petition No.4503 of 2018

WEB COPY

in a criminal Court, even then, he would be entitled to get the encashment of earned leave and encashment of unearned leave on private affairs as well as the contribution of the petitioner towards provident fund, if any. Therefore, the said benefits since, sought for by the petitioner, was rejected through the impugned order dated 08.02.2018, this Court feels that such impugned order cannot be sustained in the eye of law.

11. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order:

That the impugned order is set aside and as a sequel, there shall be a direction to the respondents to consider the plea of the petitioner to verify as to the amount payable to the petitioner by way of encashment of earned leave and encashment of unearned leave on private affairs as well as the amount payable to the petitioner by calculating the contribution made by the petitioner towards provident fund and accordingly, after calculating the amount, that may be paid to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.



Order dated 26.08.2022
Writ Petition No.4503 of 2018

With this direction, this Writ Petition is disposed of. No costs.

WEB COPY

Consequently, connected miscellaneous petition is closed.

26.08.2022

Index : Yes/No

Internet: Yes

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WEB COPY



Order dated 26.08.2022
Writ Petition No.4503 of 2018

R.SURESH KUMAR., J

gm

Writ Petition No.4503 of 2018

26.08.2022