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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.6677 of 2021

A.Dhanakodi

... Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies,
Krishnagiri Region, Krishnagiri.
2. The Deputy Registrar of Co-operative Societies,
Hosur Circle, Krishnagiri.

... Respondents

PRAYER: This Writ Petition has been filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus to direct the respondents to forth with pay the Encashment of Earned Leave, Unearned Leave on Private Affairs, Special Provident fund and General Provident fund with interest at the rate of 12% per annum.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents: Mrs.Anitha

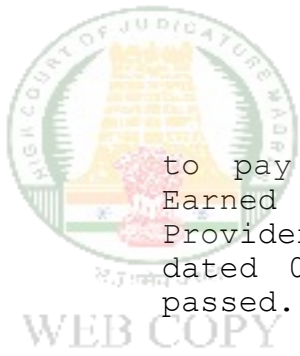
Special Government Pleader

O R D E R

The relief sought for in the writ petitioner is to direct the respondents to forth with pay the Encashment of Earned Leave, Unearned Leave on Private Affairs, Special Provident fund and General Provident fund with interest at the rate of 12% per annum.

2.Brief facts of the case:

The petitioner was entered into service in the Co-operative Department as junior assistant on 19.01.1987 and subsequently promoted as Co-operative Sub Registrar and reached the age of superannuation on 30.04.2019. One day prior to the retirement, the first respondent issued suspension order dated 29.04.2019 by suspending the petitioner from service on the ground that the charges under Rule 17(b) are pending against him, but no disciplinary proceedings were concluded. Hence, the petitioner submitted various representations to the respondents requesting



to pay the eligible retirement benefits i.e., encashment of Earned Leave, Unearned Leave, Special Provident Fund and General Provident Fund. Further, the petitioner has sent a last reminder dated 02.02.2021 to the respondents, but no orders have been passed. Hence, the writ petition.

3.The learned counsel for the petitioner would submit that the petitioner has attained the age of superannuation on 30.04.2019 and prior to his retirement the first respondent has issued order of suspension from the service on the petitioner on the ground that charges under Rule 17(b) of the Tamil Nadu Civil Service (Discipline & Conduct) Rules, are pending against him, but the order of suspension is against the G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department dated 08.06.2007. In the said G.O, it is specifically stated that "no order of suspension can be passed on the date of the retirement. It is mandatory that if at all a suspension order will have to be passed it may be done atleast three months before the date of retirement." He would further submit that the petitioner was under suspension for the past three years without any disciplinary proceedings. Hence, the petitioner made a representation to pay the eligible retirement benefits encashment viz., Earned Leave and Unearned Leave on private affairs, Special Provident Fund and General Provident Fund. However, till now no orders have been passed. Further, he would rely upon the decision of this Court in W.P.(MD).No.22823 of 2018, dated 13.12.2018 and W.P.No.35328 of 2019, dated 06.01.2020. In the light of the afore said decisions of this Court, the learned counsel for the petitioner seeks to direct the respondent to consider and pass appropriate orders for payment of such eligible terminal benefits to the petitioner.

4.When the matter was taken up for hearing on last occasion there were no instructions to the Special Government Pleader from the respondents and hence, this Court had directed the second respondent to appear before this Court. Today, the second respondent/Deputy Registrar of Co-operative Societies appeared before this Court and submitted that the first respondent is the authority to consider the request of the petitioner.

5.The learned Special Government Pleader appearing for the respondents on instructions would submit that for the disciplinary proceedings is pending against the petitioner, the enquiry officer was appointed on 18.02.2022 and still the said enquiry is pending for the mis-appropriation on issue of bogus jewel loan to 121 members to the tune of Rs.7.02 Crores and the petitioner did not take action overdue of loans to the tune of Rs.8,50,000/-.



6. Heard the learned counsel on either side and perused the materials placed on record.

7. The question of entitlement of a retired Government servant to Encasement of Leave Salary and Special Provident Fund is no longer res intergra. A Division Bench of this Court in W.A.No.207 of 2016 - (TANGEDCO Vs. P.K.Panchaksharam) had held that the pendency of disciplinary proceedings or criminal proceedings cannot be a bar to the employee seeking Encasement of Leave Salary and Special Provident Fund. The said judgment of this Court was upheld by the Hon'ble Supreme Court in S.L.P.Civil.No.16229 of 2016 by an order dated 06.07.2017. The said judgment has been followed by a learned Single Judge of this Court in W.P(MD).No.17730 of 2018. Therefore, the petitioner is entitled to Encashment of Leave Salary and Special Provident Fund, despite the pendency of the disciplinary proceedings.

8. In the light of the decision of the Division Bench of this Court reported in 2019 SCC online Madras 1195 - State of Tamil Nadu represented by the Secretary to Government, Public Works Department and Another Vs. V.Mahalingam, this Court has held as follows:

"15. As explained in detail, we do not find anything contained in any of the statutory provisions relied by the learned Special Government Pleader which have the effect of enabling the Government to withhold the encashment of the accumulated earned leave of a Government Servant when he attained the age of superannuation during his continuance in service pursuant to disciplinary proceedings or criminal prosecution pending against him at that point of time. Accordingly, we hold that in the absence of an enabling statutory provisions to that effect, an unfair advantage cannot be taken of a rather fortuitous situations by snatching the frugally accumulated earned leave of a Government Servant in a capricious manner, which remains unencashed at the time of his attaining the age of superannuation."

9. In view of the above, this Court is inclined to direct the respondents to consider the representation of the petitioner for encashment of his earned leave and all other eligible terminal benefits as per the law and pass appropriate orders as early as possible preferably within a period of twelve weeks from the date of receipt of a copy of this order.



10. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Dua

To

1. The Joint Registrar of Co-operative Societies,
Krishnagiri Region, Krishnagiri.
2. The Deputy Registrar of Co-operative Societies,
Hosur Circle, Krishnagiri.

+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.30544
+1cc to the Government Pleader, S.R.No.29398

W.P.No.6677 of 2021

BR[co]
NSK/31/05/2022