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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE N.MALA

W.A.No. 853 of 2022 and
C.M.P.No.5706 of 2022

1. The Additional Chief Secretary to
Government,
Rural Development and Panchayat Raj (E2) Department,
Secretariat, Chennai- 600 009.
2. The District Collector,
Krishnagiri District.
3. The Director of Rural Development
and Panchayatraj Department,
Panagal Building, Saidapet,
Chennai- 600 015. ... Appellants/Respondents

-vs-

Thiru.R.Sundar Bhaskar ... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 11.08.2021 made in W.P.No.20014 of 2020 and allow this Writ Appeal.

Prayer in W.P.No.20014 of 2020 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 03.07.2020 and pass order thereon by releasing payments due to the petitioner towards General Provident Fund, Statutory Provident Fund and encashment of Leave.

For Appellants : Mr.Stalin Abhimanyu
Additional Government Pleader

For Respondent : Mr.V.Vijayshankar
for M/s.Adithya Reddy



J U D G M E N T

S.VAIDYANATHAN., J
and
N.MALA., J

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The Present Appeal has been preferred against the order of the learned Single Judge dated 11.08.2021 made in W.P.No.20014 of 2020, in directing the Appellants to pass appropriate orders for releasing the balance 10% of the Special Provident Fund, General Provident Fund, Un-Earned Leave and Earned Leave within a period of 45 days from the date of receipt of a copy of the order .

2.The learned Additional Government Pleader appearing for the Appellants submitted that though the Writ Petitioner has sought for a direction to the Appellants to consider his representation dated 03.07.2020 in W.P.No.20014 of 2020, the learned Single Judge has given a positive direction as stated supra, which needs to be interfered with. He has further submitted that the disciplinary proceedings have been initiated against the Writ Petitioner and he has already withdrawn 90% of the terminal benefits. He further represented that when the Vigilance issue as against the Writ Petitioner is pending and hence he is not entitled to balance 10% of the terminal benefits.

3. Mr.V.Vijayashankar, learned counsel appearing for the Writ Petitioner/Respondent submitted that in terms of Tamil Nadu Leave Rules, 1978 encashment of leave is a right which cannot be deprived, apart from getting terminal benefits, in which he has contributed viz., towards Provident Fund. He relied upon the Judgment of the Division Bench of this Court in the case of The State of Tamil Nadu Versus V.Mahalingam reported in 2019 1 Writ LR 825, wherein it was held that in the absence of an enabling statutory provisions 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, an unfair advantage cannot be taken of a rather fortuitous situation 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. He further submitted that the Charge Sheet is yet to be initiated against the Writ Petitioner and therefore the disciplinary proceedings with respect to the Writ Petitioner is a still born child.

4. Heard both sides. Perused the records.

5. One of us (SVNJ), had also an occasion to deal with the



similar issue in W.A.No.269 of 2020 and an order was passed on 15.09.2021, by setting aside the order of the learned single Judge in respect of granting of Pension and Gratuity alone and has not interfered with the grant of other benefits.

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6. Hence we are of the view that the Writ Petitioner is entitled to encashment of earned leave and also Provident Fund, if any, contributed by him during service and gratuity can be settled depending upon the outcome of the disciplinary proceedings initiated against the Writ Petitioner and pendency of the vigilance case may not be a bar for the Appellants to proceed against the Writ Petitioner departmentally.

7. In view of the same, we do not find any reason to interfere with the order of the learned Single Judge. The Appellants are directed to comply with the order of the learned Single Judge dated 11.08.2021 within a period of two months from the date of receipt of a copy of this order. In case of initiation of departmental proceedings after issuance of Charge Memo against the Writ Petitioner, enquiry shall be conducted on a day-to-day basis without adjourning the matter beyond five working days at any point of time and bring the issue to a logical end, preferably within a period of six months from the date of receipt of a copy of this order.

In the result, this Writ Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

arr

To

1. The Additional Chief Secretary to
Government,
Rural Development and Panchayat Raj (E2) Department,
Secretariat, Chennai- 600 009.
2. The District Collector,
Krishnagiri District.



3. The Director of Rural Development
and Panchayatraj Department,
Panagal Building, Saidapet,
Chennai- 600 015.

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+1cc to Government Pleader SR.No.23383

W.A.No. 853 of 2022

SSV(CO)
GMY (27/04/2022)