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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.25921 of 2016
(Through Video Conference)

V.Annamalai

..Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by Secretary to Government,
School Education Department,
Fort St.George, Chennai 600 009
2. The Director of School Education,
College Road, Chennai 600 006
3. The District Elementary Educational Officer,
Kancheepuram District.
4. The Assistant Elementary Educational Officer,
Acharapakkam.
5. The Additional Assistant
Elementary Educational Officer,
Chithamur.

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents, more particularly, the third respondent to provide NOC for release of the gratuity amount in favour of the petitioner.

For Petitioner : Mr.Ranjith
For Mr.V.Chandraprabu

For Respondents: Ms.P.Rajarajeswari,
Govt. Advocate (School Education)



O R D E R

The petitioner herein, who retired from the service on 30.06.2010 from the post of Assistant Elementary Educational Officer, has not been paid the Gratuity amount on the ground that he had wrongly approved the release of payment of outstanding amount of Rs.1,41,667/- to one Ramashesan, while he was employed as an Assistant Elementary Educational Officer. Aggrieved against the non-disbursement of the Gratuity amount, the present writ petition has been filed.

2. The payment of Gratuity to a retired employee is not a charity by the Government but, an amount, which the Government employee would be legally and rightfully entitled on the date of his retirement. The reason for withholding of the Gratuity amount seems to be some allegation of dereliction of duties on the part of the petitioner, for which admittedly, no action was initiated against the petitioner at the time of his service. The petitioner was also permitted to retire. It is seen that when proceedings were initiated against the aforesaid Ramashesan for the recovery of Rs.1,41,667/-, this Court in an order passed in W.P.No.25483 of 2010, dated 19.11.2010 had quashed the proceedings of the fourth respondent, by granting liberty to proceed afresh with regard to the recovery of the said amount from Ramashesan.

3. The counter affidavit filed by the respondents does not reveal the further course of action initiated by them against Ramashesan. Even otherwise, if at all the respondents are aggrieved that some wrong payment has been allegedly made to Ramashesan, the only recourse available will be to proceed against Ramashesan, particularly, when the petitioner was permitted to retire and withholding of the Gratuity amount is impermissible in law on this ground.

4. The issue as to whether the Authorities are entitled to withhold the Gratuity amount due to a retired Government employee came up for consideration before this Court in the case of Ramasamy and another vs. the Managing Director and another in W.P.(MD) Nos.15875 and 15926 of 2013 and by order dated 2.12.2013, wherein this Court held that such withholding of retirement benefits is 'impermissible under law'. The relevant portion of the order reads thus:-

"3. It is well known fact that the amount of gratuity and leave encashment due to the petitioners cannot be denied to the petitioners, even assuming that the petitioners are found guilty. Similarly, leave encashment is a right, that is available to the



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petitioners for the period, they had worked. In such view of the matter, this Court is inclined to direct the respondents to make the payment of gratuity and leave encashment, amount due to the petitioners, within a period of twelve weeks from the date of receipt of a copy of this order."

5. Though the petitioner herein, has sought for the issuance of writ of Mandamus to the third respondent to provide the 'No Objection Certificate' (NOC) for the release of Gratuity amount due to the petitioner, this Court is of the view that the prayer could be moulded with a direction to the respondents 1 & 2 to forthwith release the Gratuity amount to the petitioner in view of the observations made in this order.

6. Accordingly, there shall be a direction to the respondents 1 & 2 herein, to pass appropriate orders for disbursement of all the petitioner's retirement dues, including the Gratuity amount, without insisting for a 'No Objection Certificate' (NOC) from the concerned Assistant Elementary Educational Officer. These respondents shall ensure that such orders are passed atleast within a period of two(02) weeks from the date of receipt of a copy of this order. The writ petition stands Allowed accordingly. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary to Government,
School Education Department,
Fort St.George, Chennai 600 009
2. The Director of School Education,
College Road, Chennai 600 006
3. The District Elementary Educational Officer,
Kancheepuram District.



4. The Assistant Elementary Educational Officer,
Acharapakkam.

5. The Additional Assistant
Elementary Educational Officer,
Chithamur.

+lcc to Mr.V.Chandraprabu, Advocate, S.R.No.1574
+lcc to the Government Pleader, S.R.No.1590

W.P.No.25921 of 2016

NR (CO)
PM/25/01/2022