



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.10925 & 24514 of 2014

F.K.Benedic
K.Selvadurai

..Petitioner in WP.No.10925/2014
..Petitioner in WP.No.24514/2014

Vs.

The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
(Villupuram), Villupuram District.

..Respondents in WP.No.10925/2014

1.The State Rep.by,
The Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai.

2.The District Registrar,
Cuddalore,
Cuddalore District.

..Respondents in WP.No.24514/2014

PRAYER in WP.No.10925 of 2014: This Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the respondent in his proceedings Ka.Ku.No.94/D1/TNSTC/Ka.Ma/2014, dated 26.02.2014 and quash the same and consequently directing the respondent to disburse the retirement benefits and other benefits to the petitioner.

PRAYER in WP.No.24514 of 2014: This Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the 1st respondent in his proceedings No.53415/Aa3/2007 dated 21.02.2014 and to quash the same and direct the 1st respondent to disburse the service benefits such as pension, gratuity etc.

For Petitioners : Ms.Hemalatha
for M/s.C.Prakasam
..in both WPs.



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For Respondent : Mr.G.Saravana Kumar
..in WP.No.10925/2014

For Respondents : Mr.E.Veda Bagath Singh
Special Government Pleader
..in WP.No.24514/2014

COMMON ORDER

Quoting pendency of a criminal case, the petitioners retirement benefits have been withheld. The Hon'ble Supreme Court, as well as this Court, in various decisions have held that the Government Departments cannot withhold the retirement benefits, to an employee like the Provident Fund, Encashment of Earned Leave and Encashment of Unearned Leave on private affairs, on the ground that disciplinary proceedings are pending. While the learned counsel for the petitioners placed reliance on similar decisions of this Court in the case of M.I.Muneer Ahmed vs. The Superintending Engineer, TANGEDCO, Chengalpattu District, passed in W.P.No.3945 of 2020, dated 15.02.2022, the learned standing counsel for the respondent Corporation submitted that insofar as the criminal case is concerned, the Hon'ble Division Bench of this Court, had directed the departmental enquiry to continue on day to day basis, in W.A.No.733 of 2012, which relates to the co-delinquents of the petitioners.

2. Some of the retirement benefits for which the petitioners would be entitled to, like the Provident Fund, Encashment of leave salary, cannot be withhold even under circumstances where disciplinary proceedings are pending, which proposition has been dealt with in the case of M.I.Muneer Ahmed (Supra), in the following manner:

"3.The learned Standing Counsel appearing for the respondents submitted that the Hon'ble Division Bench of this Court in W.A.No.269 of 2020 dated 15.09.2021, following the decision of the Hon'ble Apex Court in the case of Steel Authority of India Vs. Raghbendhra Singh and Others reported in (MANU/SCOR/46090/2020) and in the case of Chairman-cum-Managing Director, Mahanadi Coalfields Limited vs. Rabindranath Choubey, reported in AIR 2020 SC 2978, has observed as follows:

..... the employer has a right to withhold gratuity during pendency of the disciplinary proceedings and that the gratuity



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amount can be adjusted to recover the amount.

8. If the order of the learned Single Judge is tested in line with the aforesaid decisions of the Supreme Court, a portion of the order of the learned Single Judge, insofar as it grants gratuity and other pensionary benefits, is liable to be inferred with and the order needs slight modification. Accordingly, the order of the learned Single Judge in respect of pension and gratuity alone is set aside. The rest of the orders remain unaltered".

4. In view of the aforesaid decision of this Court, the respondent-Board may not have any serious objections to disburse the retirement benefits viz., SPF, encashment of E.L. and encashment of Un-Earned Leave on private affairs to the petitioner.

5. Considering the facts and circumstances of the case and in the light of the decision of the Hon'ble Division Bench of this Court in W.A.No.269 of 2020 dated 15.09.2021 this Court is of the view that the writ petitioner is entitled for the retirement benefits viz., SPF, encashment of E.L. and encashment of Un-Earned Leave on private affairs. Accordingly, the following directions are issued:

(i) Impugned order dated 24.05.2019 is set aside.

(ii) The respondents are directed to disburse the retirement benefits viz., SPF, encashment of E.L. and encashment of Un-Earned Leave on private affairs to the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order."

3. The aforesaid extract is self-explanatory. Thus, the petitioners herein, would be entitled for such benefits, as held in the aforesaid decisions.

4. Since the Hon'ble Division Bench of this Court has directed that the disciplinary proceedings would continue on day-to-day basis, no interference could be required to the impugned order. However, there shall be a direction to the respondents herein, to forthwith disburse the retirement benefits namely the Special Provident Fund, Encashment of Earned Leave and Encashment of Unearned Leave on private affairs, within a period of 12 weeks, from the date of receipt of a copy of this order.



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5. Accordingly, these Writ Petitions stand partly-allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Pns

To

1.The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
(Villupuram), Villupuram District.

2.The Inspector General of Registration,
The State,
Santhome High Road,
Mylapore, Chennai.

3.The District Registrar,
Cuddalore,
Cuddalore District.

+1cc to Mr.G.Saravana Kumar, Advocate SR.No.28508
+1cc to the Government Pleader SR.No.28903

W.P.Nos.10925 & 24514 of 2014

KV(CO)
GN(01/06/2022)