



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2022

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THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.18476 of 2020 and
W.M.P.No.22916 of 2020

P.Ambethkar

... Petitioner

Vs.

The Commissioner of Labour,
DMS Compound,
Teynampet,
Chennai 600 006.

... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent the communication by the Commissioner of Labour, Chennai in Na.Ka.No.H1/41315/2019, dated 24.08.2020 and quash the same and consequently, direct the respondent to disburse the Gratuity, Encashment of Earned Leave Salary, Special Provident Fund, General Provident Fund and Unearned Leave on Private Affairs of the petitioner within a specified time frame.

For Petitioner : Mr.K.Sathish Kumar

For Respondent : Mr.L.S.M.Hasan Fizal,
Addl. Government Pleader

O R D E R

This writ petition has been filed to call for the records of the respondent the communication by the Commissioner of Labour, Chennai in Na.Ka.No.H1/41315/2019, dated 24.08.2020 and quash the same and consequently, direct the respondent to disburse the Gratuity, Encashment of Earned Leave Salary, Special Provident Fund, General Provident Fund and Unearned Leave on Private Affairs of the petitioner within a specified time frame.

2. When this writ petition has been taken up for hearing, the learned counsel for the petitioner would submit that the issue of disbursement of terminal benefits pending disciplinary



proceedings or criminal case, has been settled by this Court through numerous decisions. According to the learned counsel that the terminal benefits like Encashment of Earned Leave, Special Provident Fund, General Provident Fund, Unearned Leave on Private Affairs, can never be withhold under any circumstances as it belongs to the employee concerned.

3. Thus, this Court after following number of decisions rendered earlier, recently, passed an order on 04.01.2022 in W.P.No.18392 of 2020. According to the learned counsel, the decisions rendered by the learned Single Judge in several writ petitions have been confirmed in appeals and the respective department also implemented the same.

4. As far as in respect of the above cited decision, the following two paragraphs are extracted hereunder:

"6. Both the learned counsel for the petitioner as well as learned Additional Government Pleader submit that the issue involved in this Writ Petition with regard to disbursement of terminal benefits to the employee involved in criminal proceedings is squarely covered by a decision of this Court dated 05.02.2021 in W.P.No.471 of 2021, wherein a learned single Judge of this Court following the decisions of the Division Bench of this Court in the cases of The State of Tamil Nadu and another V. The Engineer-in-Chief (Buildings) (W.A.No.1285 of 2019 dated 10.04.2019 and The Secretary to Government and others V. K.Palaniyandi (W.A.(MD) No.105 of 2019 dated 31.07.2019) held that in the absence of any enabling provision in the Statute, the Government has no authority to withhold the accrued benefits of the Government servant. The relevant portion of the order of the learned single Judge reads as follows:

10. From a reading of the above judgments, it is clear that even in a worst case scenario of dismissal, the benefits of Encashment of Earned Leave Salary, GPF and SPF, which were deducted from the salary of the employee, cannot be withheld. The Hon'ble Division Bench has categorically discussed the clarification mentioned by the learned Special Government Pleader and it is only in the



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nature of executive instruction. In the absence of any enabling provision in the statute, the Government has no authority to withhold the accrued benefits of the Government servant. Therefore, the order passed by the first respondent that all the benefits can be given only at the time of retirement or completion departmental proceedings or judicial proceedings is not sustainable.

11. Further, Rule 69(1)(b) of the Tamil Nadu Pension Rules, 1978, specified that no Gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings. But the above rule does not specify withholding of the other benefits, like Encashment of Earned Leave, GPF and SPF. In such circumstances, the impugned order, withholding the above benefits is not valid in the eye of law. Therefore, the petitioner is entitled to the benefit of Encashment of Leave Salary, SPF, GPF, Unearned Leave on Private Affairs. In so far as non-payment of Gratuity alone, the order is upheld in view of Rule 69 (1)(b) of the Tamil Nadu Pension Rules, 1978. The respondents are directed to disburse all the benefits viz., Encashment of Leave Salary, SPF, GPF, Unearned Leave on Private Affairs, within a period of six weeks from the date of receipt of a copy of this order, with interest at the rate of 6% per annum. This Writ Petition is partly allowed. No costs.

7. Following the aforesaid decision of this Court, the respondent is directed to pass appropriate orders with regard to disbursement of the admissible benefits, viz., Special Provident Fund, General Provident Fund, Encashment of earned leave and Encashment of unearned leave on private affairs, to the petitioner within a period of four (4) weeks from the date of receipt of a copy of this order.



5. The claim of the petitioner herein is covered by the above ruling of this Court, has also been acknowledged by the learned Special Government Pleader appearing for the respondent. A counter affidavit has been filed stating that as far as General Provident Fund is concerned, the employee's contribution has already been paid and the employer's contribution is still not paid.

6. This Court is of the view that the petitioner is entitled for disbursement of certain components of the retirement benefits which cannot be withheld under any circumstances.

7. Therefore, the impugned order passed in Na.Ka.No.H1/41315/2019, dated 24.08.2020, rejecting the claim of the petitioner, is hereby set aside.

8. There shall be a direction to the respondent to sanction and disburse the Encashment of Earned Leave, Special Provident Fund as far as employer's contribution is concerned and Unearned Leave on Private Affairs, within a period of four weeks from the date of receipt of a copy of this order.

9. With the above direction, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

gsk

To

The Commissioner of Labour,
DMS Compound, Teynampet,
Chennai 600 006.

+1cc to Mr.K.Satish Kumar, Advocate SR.No.4226
+1cc to the Special Government Pleader SR.No.4906

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RP(CO)
GN(17/02/2022)