



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2022

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. No.18392 of 2020
and WMP No.22783 of 2020

P.Ranganathan

... Petitioner

Vs

The Treasury Officer,
District Treasury,
Collectorate,
Namakkal.

... Respondent

PRAYER :

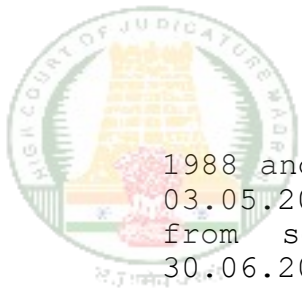
Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the respondent the communication by the Treasury Officer in his proceeding vide Na.Ka.No.412/2020/A1 dated 26.05.2020 and quash the same and consequently, direct the respondent to disburse the General Provident Fund, Special Provident Fund, Encashment of Earned Leave, Unearned Leave on private affairs, terminal benefits and subsistence allowance/provisional pension of the petitioner within a specified time frame.

For Petitioner : Ms.K.Sathish Kumar

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

O R D E R

The case of the petitioner is that he was appointed as Junior Assistant on 25.03.1998 and while he was subsequently promoted and working as Accountant at District Treasury, Namakkal, he was placed under suspension on 04.05.2007 on the ground that he was arrested for the offence under Section 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act,



1988 and a case was registered in Crime No.2/Ac/2007/SL/SC dated 03.05.2007. Further, the petitioner was not permitted to retire from service upon reaching the age of superannuation on 30.06.2010.

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2. Since the terminal benefits have not been paid to the petitioner, the petitioner has approached this Court in W.P.No.16898 of 2010 seeking provisional pension. This Court, by order dated 02.11.2011 directed the respondent to pay the provisional pension without prejudice to the criminal proceedings. However, the respondent while paying 50% of the subsistence allowance refused to pay the retirement benefits vide order dated 13.12.2010. Challenging the said order, the petitioner has yet again approached this Court in W.P.No.26806 of 2014.

3. During the pendency of the aforesaid Writ Petition, the petitioner was convicted and awarded a sentence of 2 years simple imprisonment with fine of Rs.1000/-. Thereafter, this Court, vide order dated 19.11.2019 disposed W.P.No.26806 of 2014 directing the respondents to consider the representation of the petitioner by affording an opportunity on merits.

4. Challenging the order of conviction, the petitioner has filed an appeal in CrI.A.No.710 of 2017 on the file of the this Court seeking suspension of sentence. This Court vide order dated 09.11.2017 suspended the sentence awarded to the petitioner. Thereafter the petitioner was issued with a show cause notice dated 09.01.2018, for which the petitioner has submitted his explanation.

5. The grievance of the petitioner is that the respondent without considering the explanation submitted and conducting any departmental proceedings, terminated the petitioner vide order dated 30.01.2018. Furthermore, it is also his grievance that his request for payment of terminal benefits was also rejected by the respondent vide order dated 26.05.2020. Challenging the same, the present Writ Petition has been filed.

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:

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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 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.



8. The Writ Petition is disposed of. No costs. Connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Treasury Officer,
District Treasury,
Collectorate,
Namakkal.

+1cc to Ms.K.Sathish Kumar, Advocate, S.R.No.354

+1cc to the Government Pleader, S.R.No.1099

W.P. No.18392 of 2020
and WMP No.22783 of 2020

GSM(CO)
CT 24/01/2022