



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2022

CORAM :

THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.2555 of 2021

B.Muthukrishnan

... Petitioner

Vs.

1. The Joint Registrar,
Ramanathapuram District Consumer,
Co-operative Wholesale Store Ltd,
(RAMCO) ,
District Collector Complex,
Ramanathapuram,
Ramanathapuram District.
2. The Deputy Registrar/Managing Director,
Ramanathapuram District Consumer
Co-operative Wholesale Store Ltd.,
(RAMCO) ,
Vandikkara Street,
Ramanathapuram,
Ramanathapuram District.
3. The General Manager,
Ramanathapuram District Consumer
Co-operative Wholesale Store Ltd.,
(RAMCO) ,
Vandikkara Street,
Ramanathapuram,
Ramanathapuram District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in ந.க.எண். 4499/2019-ப.ப.1 dated, 14.05.2020 passed by the second respondent herein and quash the same as illegal and consequently direct the respondents 1 to 3 to disburse retirement benefits of the petitioner in accordance with law, within time stipulated by this Court.

For Petitioner

:Mr.D.Balamurugapandi

For R1

:Mr.A.Kannan,

Additional Government Pleader

For R2 & R3

:Mr.S.Seenivasagam



O R D E R

The writ petition is filed to quash the impugned order passed by the second respondent in e.f.vz; 4499/2019-g.gp.1 dated, 14.05.2020, holding the petitioner's retirement benefits, even after his retirement on 31.05.2019, on the ground that a criminal case is pending against him, in Crime No.336 of 2014.

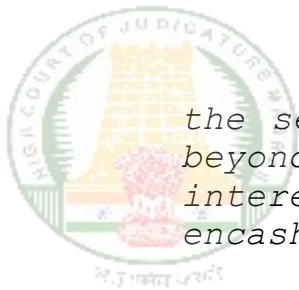
2.The case of the petitioner is that he was working as Salesman under the respondents. During his tenure, a criminal case has been registered as against the petitioner in Crime No.336 of 2014, for the alleged offence that he supplied kerosine to the family card holders, who are having gas connection. He retired from service on 31.05.2019 on attaining superannuation. The grievance of the petitioner is that by the impugned order, though the petitioner was allowed to retire on his attaining superannuation on 31.05.2019, the respondents have not disbursed his retirement benefits, even after his retirement, on the ground that a criminal case is pending against him. The learned counsel for the petitioner submits that though the respondent has issued charge memo, they have not concluded the enquiry so far, by referring the criminal case pending against the petitioner.

3.The learned counsel appearing for the respondents 2 & 3 submits that a criminal case is pending against the petitioner in Crime No.336 of 2014 and thereby, the departmental proceedings has not been concluded. The representation submitted by the petitioner has also been suitably replied. Hence, the petitioner has come up with the present writ petition.

4. This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

5.The petitioner's retirement benefits have not been disbursed to him even after his retirement on 31.05.2019, in view of the pendency of a criminal case as against him. The departmental proceedings initiated against the petitioner could not be concluded due to pendency of the criminal case. It is to be noted that pendency of a criminal case cannot be a bar to proceed with the departmental proceedings. It is brought to the knowledge of this Court that even the dismissed employee is entitled for the leave salary as per the judgment of the Division Bench of this Court, reported in 2019 (5) CTC 19, wherein, it was held as follows:

13.Perusal of the above said Rule and the Explanation would show that even a Government servant, whose service is either terminated by Notice or has been compulsorily retired from service as a measure of punishment and where



the service of such Government Servant has been extended beyond the date of superannuation, of-course in the interest of public service, is certainly entitled for encashment of leave on private affairs.

14. In other words, it is to be noted that even a person, who is dismissed from service, is also entitled to the encashment of Leave salary. If that being case, we do not find any logic behind the contention of the Appellant as if such amount can be paid only after the termination of the proceedings. In other words, there must be a specific reason with object for retention of the said sum, pending Disciplinary proceedings. What the Government Servant is entitled to even at the worst scenario of dismissal of his service, cannot be denied to be paid on his request, merely because, his service is retained.

15. There are two types of monetary benefits payable to a Government Servant on retirement. One type of such benefits, such as Earned Leave, Provident Fund and Special Provident Fund amount, is a benefit already accrued and got credited to the account of the Employee, which he is entitled to receive automatically on attaining superannuation. Those amounts become his personal property. It makes no difference even if he is not permitted to retire and a Departmental proceedings is initiated against him. In other words, those amounts are derived out of like his ''savings'' and therefore, the Employer cannot stake any claim or impose any restriction as to when such amount could be paid to the Employee even after attaining the age of superannuation. In other words, even as per Rules, these amounts are payable either on the date of superannuation or on the date of termination of extension of service. Such payment is to be made even to a person dismissed from service. When such being the position, there cannot be any justification on the part of the Employer to retain the said sum by citing the pendency of proceedings.

16. The other type of Monetary benefit payable to an Employee on his retirement, such as pension, gratuity, etc., is certainly not liable to be paid automatically on the person attaining superannuation, if the said person is not permitted to retire on the other hand, proceedings are initiated against him and the same is pending. The outcome of such proceedings will certainly have a bearing on the entitlement to get or liability to pay such amount. Therefore, the person, who attained the age of superannuation and not to allow retire, based on pendency



of the Disciplinary proceedings, cannot expect the Employer to make the payment of Pension and Gratuity, etc., even before the proceedings gets terminated, since such liability is depending upon the outcome of such proceedings.

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6.As per the order passed by the Division Bench of this Court as stated supra, even the dismissed employee is entitled for the leave salary. Hence, the respondent shall proceed with the departmental proceedings and conclude the same within a period of three months from the date of receipt of a copy of this order. Even, if the petitioner is found to be guilty, the petitioner is entitled for leave salary and other benefits as per dictum laid down by the Division Bench of this Court as stated above. The benefits such as, Earned Leave, Provident Fund and Special Provident Fund amount, is a benefit already accrued and got credited to the account of the Employee, which he is entitled to receive automatically on attaining superannuation. In view of the above, the respondent shall pay all the eligible terminal benefits to the petitioner, within a period of six weeks from the date of receipt of a copy of this order.

7.With the above observations and directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (WRITS)

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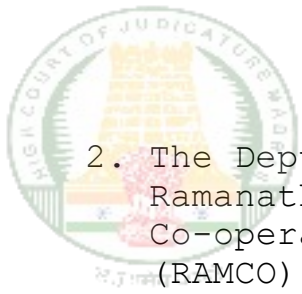
Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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+1 CC to M/s.SPL.GP (SR-805[F] dated 07/01/2022)

+1 CC to M/s.D.BALAMURUGAPANDI, Advocate (SR-630[F] dated
06/01/2022)

Order made in
W.P(MD) No.2555 of 2021

06.01.2022

USK/22.03.2022/5P/6C