



W.P(MD)No.12232 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12232 of 2021

Athigaman

... Petitioner

Vs.

The Chief Educational Officer,
Chief Educational Office,
Virudhunagar District,
Virudhunagar.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order passed by the Respondent vide his Proceedings in Na.Ka.No.958/A1/2016, dated 28.06.2021 and quash the same as illegal and consequently direct the Respondent to release the earned leave salary, unearned leave salary and Special Provident Fund to the Petitioner.

For Petitioner : Mr.N.Anandkumar

For Respondent : Mr.J.Ashok
Additional Government Pleader

ORDER

Heard the learned counsel on either side.



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2. The writ petitioner joined the Education Department as PG Assistant in the year 1980. He was promoted as Headmaster in the year 2006 and later, became P.A to Chief Educational Officer (Higher Secondary). He was implicated in a vigilance case. Spl.C.C.No.5 of 2017 in which the petitioner is figuring as accused is still pending. He reached the age of superannuation on 31.05.2016. In view of the pendency of the vigilance case, he was not allowed to retire. The petitioner only wants the earned leave salary, unearned leave salary and his contribution to Special Provident Fund to be disbursed. His request was rejected by the impugned order dated 28.06.2021. Challenging the same the present writ petition has been filed.

3. The respondent has filed a counter affidavit and the learned Additional Government Pleader took me through its contents.

4. Apart from reiterating the reasons set out in the impugned order, the learned Additional Government Pleader relied on G.O.Ms.No.100, Human Resources Management (F.R.II) Department, dated 07.09.2022 which states that if an employee is retained in service pending conclusion of the disciplinary proceedings, his earned leave salary will not be paid and it will have to be abide by the outcome of the departmental action. But then, the petitioner retired



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before the issuance of the said G.O. Therefore, the said G.O. cannot be retrospectively applied in the case of the writ petitioner.

5. The learned counsel appearing for the petitioner draws my attention to the decision reported in (2019) 5 CTC 19(Secretary to Government, Revenue Department and others Vs. K.Palaniyandi). Paragraph No.14 of the said order is as follows:-

“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. It 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 senorio of dismissal of his service, cannot be denied to be paid on his request, merely because his service is retained.”

6. The said decision clearly applies to the case on hand. Respectfully applying the said ratio, the order impugned in the writ petition is quashed. The respondent is directed to release the earned leave salary and un-earned leave salary and the petitioner's contribution to the Special Provident Fund. This disbursement shall be done within a period of eight weeks from the date of receipt of a copy of this order.



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G.R.SWAMINATHAN, J.

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7. The Writ Petition is allowed. No costs.

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Index : Yes / No
Internet : Yes/ No
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To

The Chief Educational Officer,
Chief Educational Office,
Virudhunagar District,
Virudhunagar.

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