



W.P.(MD) No.13977 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.13977 of 2020

M.Ponraj

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The Deputy Inspector General of Police,
Madurai Range, Madurai.

3.The Superintendent of Police,
Madurai District, Madurai.

... Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling the records of the second respondent i.e., the Superintendent of Police, Madurai in C.No.N4/14537/2019, dated 02.05.2019 and quash the same and consequently, direct the respondents to disburse the Encashment of Leave Salary and Special Provident Fund No.1 & II of the petitioner within a specified time frame that may be fixed by this Court.



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For Petitioner : Mr.S.Visvalingam
For Respondent : Mr.G.Suriyananth
Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent.

2.The petitioner herein, while serving as Head Constable, was due to retire from service on 31.03.2018. Prior to the date of his superannuation, the respondents herein had placed him under suspension and did not permit him to retire, by quoting the pendency of a criminal case. Subsequently, he was dismissed from service on 07.04.2020 in view of the Judgment of conviction passed by the trial Court. The petitioner's request to pay the eligible terminal benefits was rejected through the impugned order, dated 02.05.2019, which is under challenge in the present writ petition.

3.The proceedings of the second respondent herein, denying the eligible terminal benefits cannot be sustained in view of various decisions of this Court. In the case of ***Chief Secretary to Government, Public (Special-A)***



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Department, Fort St. George, Chennai Vs. M.Uthiraswamy, a Honourable

Division Bench of this Court had passed orders on 22.11.2019 in W.A.No. 4018 of 2019, holding that such eligible benefits cannot be forfeited even in cases of termination. The relevant portion of the order reads as follows:

“16.Employees contribution to Provident Fund and leave which has been earned by him (not encashed) are the property of the employee, they cannot be taken away, without due process of law, as enshrined, under Article 300-A of the Constitution of India. There is nothing in the Rules which has been relied by the learned Government Pleader, which will enable the Government to withhold the Employee's own contribution to Provident Fund and encashment of accumulated earned leave when the Government servant has attained the age of superannuation. These amounts have to be given to the Government servant, even if the criminal proceedings culminate against the Government servant and the Government servant is terminated from service. If these amounts cannot be forfeited even on termination, there is no justification in withholding the same during the continuation of criminal proceedings after the Government servant has attained the age of superannuation.”



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4.The aforesaid order is self explanatory. As such, denial of the eligible benefits to an employee, who is under suspension pending the criminal case, would be entitled for certain eligible benefits like his contribution to the provident fund and encashment of leave salary.

5.In the light of the above findings, the impugned order passed by the second respondent in C.No.N4/14537/2019, dated 02.05.2019, is hereby quashed. Consequently, there shall be a direction to the respondents herein to pass appropriate orders, disbursing the petitioner's contribution to the Special Provident Funds I & II and Encashment of Leave Salary, within a period of four weeks from the date of receipt of a copy of this order.

6.Accordingly, this writ petition stands allowed. There shall be no order as to costs.

10.08.2022

Index : Yes / No
Speaking Order/ Non Speaking Order
TM



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M.S.RAMESH,J.

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