



W.P.(MD) No.14014 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.14014 of 2020

S.Santhakumar

... 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.**

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the first respondent i.e., the Additional Chief Secretary to Government, Home, Prohibition and Excise Department, Chennai to take immediate action for disbursement of the Encashment of Leave Salary and Special Provident Fund No.II, within a specified time frame



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WEB COUNCIL that may be fixed by this Court.

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 respondents.

2.The petitioner herein, while serving as Special Sub-Inspector of Police, was due to retire from service on 31.03.2015. On the date, when he reached the age of 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 by order dated 29.09.2020 in view of the Judgment of conviction passed by the trial Court. The petitioner made a request to the respondents to pay the eligible terminal benefits through his representation, dated 16.03.2019. Since the said representation has not been considered till date, the petitioner has come forward with this present writ petition.



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3.The pending of the representation of the petitioner seeking 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) 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



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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.”

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, there shall be a direction to the respondents herein to pass appropriate orders, disbursing the petitioner's contribution to the Special Provident Fund No.II and Encashment of Leave Salary, within a period of four weeks from the date of receipt of a copy of this order.



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WEB COPY 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
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To

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M.S.RAMESH,J.

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