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.15177 of 2022
and W.M.P.(MD).No.10872 of 2022

E.Vetriselvi ... Petitioner

Vs.

1.The Principal Secretary to Government,
Revenue and Disaster Management Department,
Secretariat,
Chennai – 600 009.

2.The Additional Chief Secretary / Commissioner of
Revenue Administration,
Ezhilagam,
Chepauk,
Chennai – 600 005.

3.The District Collector,
Madurai District,
Madurai – 625 020.

4.The Tahsildar,
Kallikudi Taluk,
Kallikudi,
Madurai District. ... Respondents

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 Additional Chief Secretary / Commissioner of Revenue Administration, Chennai, in his No.5(2) / 45964 / 2013, dated 10.06.2021 and the fourth respondent i.e., The Tahsildar, Kallikudi, relating to his Na.Ka.No.E3/33/2019, dated 09.06.2022 and quash the portion relating to non-payment of Encashment of Leave Salary alone and consequently, direct the respondents for arranging payment of Encashment of Leave Salary alone to the petitioner, within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mrs.D.Farjana Ghoushia
Special Government Pleader

O R D E R

The petitioner herein claims Encashment of Leave Salary of her late husband namely S.Elangovan, on the ground that such benefit cannot be with held by the Department, even though he was dismissed from service.

2. In the impugned order, dated 10.06.2021, rejecting the petitioner's request, it has been stated that since the petitioner's husband was dismissed from service on 28.08.2018 for his conviction, he is not entitled for such benefits. I am not in agreement with the reasoning adopted by the

respondents. The Encashment of Leave Salary is a benefit, which the petitioner's husband is lawfully entitled to, irrespective of the fact whether he was dismissed from service or otherwise terminated. This ratio has been reiterated in various decisions of this Court and one such decision is in the case of ***G.Antonysamy Vs. The Deputy Director of Survey and Land Records, Madurai and another*** made in ***W.P.(MD)No.23713 of 2019, dated 23.01.2020***. The relevant portion of the order reads as follows:

> *“2.The issue with regard to the disbursement of the encashment of leave salary and special provident fund has already been settled in various decision and the judgment of the Division Bench in W.A.No.207 of 2016 dated 26.02.2016 in the case of TANSIDCO vs P.K.Panchaksharam is one, wherein it was held as follows:-*
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> > *'2.The writ petitioner, who is the respondent herein, filed the writ petition, seeking direction to the appellants herein to disburse his retirement benefits, such as gratuity, special provident fund, encashment of earned leave and unearned leave on private affairs.*
> >
> > *3.The respondent herein working as Electrician in the Electricity Board was to retire on attaining the age of superannuation on 30th*

June, 2013. However, he was not permitted to do so on account of pendency of the criminal case under the provisions of the Prevention of Corruption Act, 1988.

4.The learned Single Judge, considering all aspects of the matter, held that the petitioner was having earned leave and unearned leave on private affairs before initiation of the case and as such, he is entitled to encashment of earned leave and unearned leave on private affairs. The claim of gratuity was given up by the employee / writ petitioner on the ground that in the event of conviction and dismissal of service, the writ petitioner may not be entitled to get gratuity. The special provident fund was also not granted as the writ petitioner failed to establish any contribution made by him. While disposing of the writ petition, a direction was made to the appellants herein to disburse encashment of earned leave and encashment of unearned leave on private affairs. In respect of special provident fund, it was held that if any contribution was made by the writ petitioner, the same can be paid to the petitioner.

5.We do not find any error, illegality or infirmity in the order sought to be impugned in this writ appeal preferred by the Tamil Nadu Generation and Electricity Distribution Corporation Ltd., warranting interference. Thus, the writ appeal stands dismissed. No costs. Consequently connected miscellaneous petition stands closed.'

3.The aforesaid observations made in the decision are *self explanatory. In view of these observations, it can be held that the earned leave salary and the petitioner's contribution towards Special Provident Fund would be deemed to be the petitioner's property, which he would be entitled to receive the same."*

3. The above said extract is self explanatory. By applying the ratio laid down therein, the reason adopted by the second respondent in the impugned order, for rejection of the petitioner's claim, cannot be sustained.

4. Accordingly, the impugned order passed by the second respondent in No.5(2) / 45964 / 2013, dated 10.06.2021, and the proceedings of the fourth respondent in Na.Ka.No.E3/33/2019, dated 09.06.2022, are hereby quashed. Consequently, there shall be a direction to the second respondent herein to pass appropriate orders, disbursing the Encashment of Leave Salary to the petitioner, to which the petitioner's husband is eligible, within a period of six weeks from the date of receipt of a copy of this order.

5. This writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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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