



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2022

CORAM :

WEB COPY

THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.15348 of 2021

Sankaralingam Paulraj

Petitioner

Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Revenue Divisional Officer,
Aruppukkottai,
Virudhunagar District.

3.The Tahsildar,
Virudhunagar Taluk,
Virudhunagar District.

Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the second respondent vide his proceedings in Na.Ka.A1/6648/2012, dated 02.08.2021 and quash the same as illegal and consequently direct the respondent to release the earned and unearned leave salary and special provident fund benefits to the petitioner.

For Petitioner

:Mr.N.Anandakumar

For Respondents

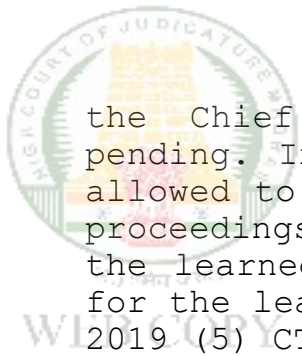
:Mr.A.Kannan

Additional Government Pleader

O R D E R

The writ petition is filed to quash the order of the second respondent in his proceedings Na.Ka.A1/6648/2012, dated 02.08.2021 and consequently direct the respondent to release the earned and unearned leave salary and special provident fund benefits to the petitioner.

2.The case of the petitioner is that while he was working as Village Administrative Officer in Chatrarettiypatti Village, Virudhunagar Taluk in the year 2012, he was arrested by the Vigilance and Anticorruption Wing, Virudhunagar in Cr.No.9 of 2012 and charge sheet was also filed in CC No.7 of 2014, on the file of



the Chief Judicial Magistrate, Srivilliputhur, which is still pending. In view of the pendency of the criminal case, he was not allowed to retire on the date of superannuation on 31.07.2014, vide proceedings in Na.Ka.A1/6648/2012, dated 31.07.2014. According to the learned counsel for the petitioner, the petitioner is entitled for the leave salary, as per the judgment of this Court, reported in 2019 (5) CTC 19. Hence, he filed this present writ petition.

3.The learned counsel appearing for the respondents submits that the petitioner is facing serious allegation of bribe in the criminal case pending against him. Due to pendency of the criminal case, he is not allowed to retire from service. Further, the petitioner is entitled for the contribution to the special provident fund alone. With regard to disbursement of earned and unearned leave salary, the rejection order has been rightly passed by the second respondent. Therefore, there is no need to interfere with the impugned order of the second respondent.

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

5.Admittedly, the petitioner is facing criminal case in C.C.No.7 of 2014, on the file of the Chief Judicial Magistrate, Srivilliputhur and the criminal case is yet to be concluded. 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.

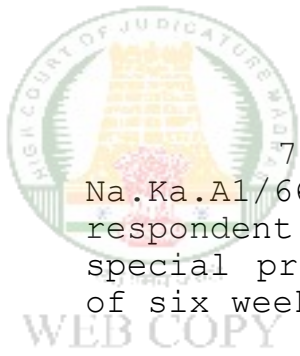
14.In other words, it is to be noted that even a person, who is dismissed from service, is also entitled to the encashment of Leave salary. If that being case, we do not find any logic behind the contention of the Appellant as if such amount can be paid only after the termination of the proceedings. 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.

6. In view of the order passed by the Division Bench of this Court as stated supra, even the dismissed employee is entitled for the leave salary. More so, 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. Therefore, the respondent is liable to pay the eligible earned and unearned leave salary and special provident fund benefits to the petitioner.



7.In view of the above, the impugned order in Na.Ka.A1/6648/2012, dated 02.08.2021 is hereby quashed and the respondent shall settle the earned and unearned leave salary and special provident fund benefits to the petitioner, within a period of six weeks from the date of receipt of a copy of this order.

8.With the above direction, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vrn

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

- 1.The District Collector,
Virudhunagar District,
Virudhunagar.
- 2.The Revenue Divisional Officer,
Aruppukkottai,
Virudhunagar District.
- 3.The Tahsildar,
Virudhunagar Taluk,
Virudhunagar District.

+1 CC to M/s.SPL.GP (SR-804[F] dated 07/01/2022)

+1 CC to M/s.N.ANANDAKUMAR, Advocate (SR-921[F] dated 10/01/2022)

W.P (MD) No.15348 of 2021

06.01.2022

_RD(04.02.2022) 4P 6C