



W.P(MD)No.18425 of 2022

7BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18425 of 2022

and

W.M.P.(MD)No.13430 of 2022

R.Sathiya Moorthy

... Petitioner

Vs.

The Madurai Kamaraj University,
Rep by its Registrar, Palkalai Nagar,
Madurai, Madurai District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the respondent in his proceedings in No.R/MKU/ACE-DDE/2021 dated 02.02.2022 and quash the same as illegal and consequentially to direct the respondent to release the Enhancement of Earned leave and Contributory Pension along with interest within a time stipulated by this Court

For Petitioner : Mr.C.Venkatesh Kumar

For Respondent : Mr.K.Ragatheesh Kumar,
For M/s.Isacc Chambers.



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ORDER

Heard the learned counsel on either side.

2.The writ petitioner was employed on consolidated pay basis in various posts in the respondent university between 1983 and 2005. He was appointed as clerk in a regular vacancy on regular time scale of pay in respondent university on 14.11.2005. He was promoted as assistant and then as superintendent and then as senior superintendent. When he reached the age of superannuation on 30.04.2020, he was facing vigilance proceedings. He was under suspension. He was relieved from duty subject to the outcome of the vigilance proceedings and any departmental action that may be taken to recover the loss that might have occurred to the university.

3.Since the petitioner had joined the university service only on 14.11.2005, he was under the New Contributory Pension Scheme which had come into force vide G.O.Ms.No.430 Finance (Pension) Department, dated 06.08.2004 with effect from 01.04.2003. The question that arises in this case is whether the petitioner is entitled to encash his earned leave and the contributory pension. The petitioner represented to the respondent in this regard. His request for encashment of earned leave was rejected by the impugned



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proceedings dated 02.02.2022. The respondent took the stand that the petitioner's request will be considered only after getting the final report from the Directorate of Vigilance and Anti-Corruption, Chennai. Questioning the same, this writ petition has been filed.

4. When the matter was taken up for disposal, the learned standing counsel pointed out that on 15.04.2022, Crime No.7 of 2022 has been registered and that the petitioner is figuring as second accused. The preliminary report of DVAC reveals loss to the tune of Rs.2,81,587/-. The learned standing counsel submitted that the impugned proceedings do not call for any interference.

5. Let me consider the issue of encashment of earned leave. The statutes (not to be confused with the usual meaning we attach to the said expression) governing Madurai Kamarajar University deal with “earned leave”. A permanent university servant in superior service shall earn leave at the rate of 1/11th of the period spent on duty, provided that he shall cease to earn leave while he has to his credit such leave amounting to 180 days. If the employee is in inferior service, it will be at the rate of 1/22nd of the period spent on duty and he shall cease to earn leave while he has to his credit such leave amounting to



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60 days. There is no dispute that the Tamil Nadu Pension Rules as amended from time to time have been made applicable to the servants of the universities with effect from 01.04.1976 for the payment of retirement benefits.

6.The petitioner has not questioned the order dated 30.04.2020 whereby he was relieved from duty subject to conditions. Now let me assume the worst against the petitioner. It is possible that the petitioner may be visited with maximum punishment that is imposable on him. Even then, the petitioner will be entitled to certain monetary benefits. If an employee is under the old pension scheme and he is dismissed or removed from service, by virtue of Rule 21 of Tamil Nadu Pension Rules, that would entail forfeiture of his past service and he will not be entitled to any pension. But under the New Pension Scheme, the employee contributes every month 10% of basic pay and DA from his salary to the contributory pension scheme. There will be a matching contribution made by the employer. The contribution made by the employee is out of his salary which he has earned. This cannot be denied to him even if he is dismissed from service. Of course, that stage is yet to arise. No final order has been passed against the petitioner. Till then, while the petitioner cannot claim commutation, he will be entitled to provisional pension. The respondent cannot refuse to release provisional pension to him. Likewise, a person who



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has not been permitted to retire because of the pendency of departmental action or criminal prosecution would still be entitled to get benefits such as provident fund, special provident fund and surrender and encashment of earned leave salary (WP(MD)No.11833 of 2020, dated 16.09.2020). The petitioner cannot be denied the benefit sought for in this writ petition. The impugned order is interfered with the above extent. The respondent is directed to pay provisional pension together with arrears to the petitioner. The respondent shall also pay the encashed value of leave surrendered to the petitioner. This shall be done within a period of six weeks from the date of receipt of copy of this order.

7.This writ petition is allowed accordingly. No costs. Connected miscellaneous petition is closed.

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