



W.P(MD)No.26559 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.26559 of 2022

S.Namasivayam

... Petitioner

Vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Revenue Divisional Officer,
Devakottai,
Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned rejection order in Na.Ka.A2/1480/2020 dated 09.03.2022 issued by the 2nd respondent and quash the same as illegal and arbitrary exercise of power and consequently, direct the 2nd Respondent to disburse the monetary benefits to the petitioner such as Special Provident Fund and encashment of earned and unearned leave salary etc., in the light of the Judgment in W.A.No.4018 of 2019 dated 22.11.2019.

For Petitioner : Mr.R.Gowrishankar

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader



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ORDER

Heard the learned counsel on either side.

2. The petitioner was working as Village Administrative Officer. He was convicted in a vigilance case. Therefore, he was dismissed from service vide order dated 25.06.2008. The petitioner however states that the petition mentioned benefits cannot be settled. His request has been rejected by the impugned order dated 09.03.2022. Challenging the same, the present writ petition has been filed.

3. The learned Additional Government Pleader appearing for the respondents seeks time to file counter.

4. In normal circumstances, I would have definitely granted time. The issue on hand was considered by the Hon'ble First Bench of Madras High Court in W.A.No.4018 of 2019 vide Order dated 22.11.2019 (The Chief Secretary to Government, Public (Special A) Department, Chennai V. M.Uthiraswamy). The Hon'ble First Bench has held 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



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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. ”

5. It is true that the learned Additional Government Pleader would place reliance on G.O.(Ms)No.100, Human Resources Management (FR.II) Department, dated 07.09.222 which states that dismissed government servant shall not be eligible for encashment of earned leave and leave on private affairs. However, this contention is not sustainable. The amendment made to the Pension Rules came into force only with effect from 07.09.2022. The petitioner's case arose much earlier. Therefore, the issue on hand is covered by the decision of the Hon'ble First Bench. The amendment made to the Fundamental Rule and the Tamil Nadu Leave Rules, 1933, cannot be retrospectively applied to the prejudice of the writ petitioner.

1. In that view of the matter, the impugned order is set aside. The respondents are directed to settled the petition mentioned monetary benefits within a period of twelve weeks from the date of receipt of a copy of this order. The payment of interest will arise only if the disbursement is not made within twelve weeks.

2.



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7. The Writ Petition is allowed. No costs.

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Index : Yes / No

Internet : Yes/ No

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To

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