



W.A.No.579 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

AND

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

W.A.No.579 of 2020
and CMP No. 8171 of 2020

1. The Secretary to Government,
Government of Tamilnadu,
Revenue Department,
Secretariat, Chennai 600 009.

2. The Commissioner of Revenue Administration,
Chepauk, Chennai 600 005.

3. The District Collector,
Cuddalore District,
Cuddalore.

...Appellants/Respondents

Vs.

R.Rangarajan
Special Tahsildar (Land Acquisition),
National Highways,
Chidambaram, Cuddalore District.
(Under order of suspension and not
permitted to retire)

... Respondent/Petitioner



W.A.No.579 of 2020

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 21.10.2019 made in W.P. No.29441 of 2019 and to set aside the same.

For Appellants : Mr. G.Nanmaran
Special Government Pleader

For Respondent : Mr. R.Prem Narayan

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The State is aggrieved by the order of the Writ Court directing disbursal of the Earned Leave Encashment, General Provident Fund, Family Benefit Fund and a consequential retirement and pensionary benefits within a time frame.

2. The respondent, who was working as a Special Tahsildar, Land Acquisition, was placed under suspension from service for the reason that a criminal case was registered against him for certain delinquencies and



W.A.No.579 of 2020

misappropriation committed by him, while he was working as a Special Tahsildar, (Land Acquisition) National Highways, Chidambaram. A Criminal case in Crime No.3 of 2014 was registered against the respondent and other officials under Sections 404, 465, 468, 471, 477(A) and 420 of the Indian Penal Code, in the District Crime Branch and the respondent was also arrested. He was placed under suspension by the proceedings of the District Collector, Cuddalore on 30.09.2014. The respondent filed a Writ Petition in this Court seeking permission to retire. This Court directed the District Collector to dispose of his representation. The District Collector by his order dated 22.12.2015 rejected his representation and confirmed the order not to allow him to retire till conclusion of the Criminal Proceedings.

3. While things stood thus, the petitioner came up with the instant Writ Petition seeking a Mandamus as aforesaid. The Writ Court upon considering the relevant Rules and the judgment of this Court in WA No.1485 of 2018 held that Encashment of Earned Leave, General Provident Fund and Family Benefit Fund are payable even if the employee is not allowed to retire and even if there are criminal cases pending against him



W.A.No.579 of 2020

since those monies belonged to him. Aggrieved the Government is on

Appeal.

4. Mr.Nanmaran, learned Special Government Pleader appearing for the appellants would vehemently contend that the Government is entitled to withhold the retiral benefits under Rule 69(1)(b) of the Tamil Nadu Pension Rules, since the Writ Court had not considered the said provision, the order of the Writ Court is liable to be interfered with.

5. Contending contra Mr.R.Prem Narayanan, learned counsel appearing for the respondent would submit that a Division Bench of this Court in WA No.4018 of 2019 had gone into the question in detail and had concluded that the Earned Leave Encashment, General Provident Fund and Family Benefit Fund cannot be with held even in cases where the criminal proceedings are launched against the employee and he is not allowed to retire because of the pendency of such criminal proceedings.

6. We have gone through the judgment of the Division Bench in



W.A.No.579 of 2020

The Chief Secretary to Government v. M.Uthiraswamy, (Writ Appeal No.4018 of 2019) dated 22.11.2019, the Division Bench had referred to Rule 56(1) of the Fundamental Rules, Rule 21 of the Tamil Nadu Pension Rules, 1978 and Rule 7(1) of Annexure III of Tamil Nadu Leave Rules. After elaborate consideration of the impact of the relevant Rules as well as the judgment of another Division Bench of this Court in WA No.1285 of 2019., the Division Bench has concluded that even under Rule 69 or under any of the above Rules, the Government has no power to retain the monies particularly the Earned Leave Encashment, the General Provident Fund and the Family Benefit Fund, even in cases where the employee is not allowed to retire due to pendency of the criminal proceedings.

7. Useful reference can be made to the judgment of the Division Bench in ***State of Tamil Nadu, Rep. by its Secretary to Government, Public Works Department, Secretariat, Fort St. George, Chennai and others v. V.Mahalingam, (WA No.1285 of 2019)***, wherein the another Division Bench of this Court had considered the question as to whether encashment of Earned Leave can be given to a Government servant who is



facing the criminal charges. On interpretation of Rule 21 of the Tamil Nadu Pension Rules and Rule 56(1) of the Fundamental Rules, the Division Bench in its judgment had held as follows:

“7. Rule 21 of the Tamil Nadu Pension Rules, 1978, is extracted below:-

“21. Forfeiture of service on dismissal or removal:- Dismissal or removal of Government Servant from a service or post entails forfeiture of his past service.”

The Learned Special Government Pleader submits that the forfeiture of past service of a Government Servant on his dismissal or removal from a post entails that no benefits arising out of service could be claimed by him. It must be remembered that the aforesaid rule has to be read in the context of the Tamil Nadu Pension Rules, 1978, where it is found, and cannot be extended beyond its scope. Viewed in that perspective, what has been meant to be conveyed by ‘forfeiture’ in the said rule is that a Government Servant, who has been dismissed or removed from service, would not be entitled to claim pension relying on his past service. As such, it would be far fetched to



read that provision as if all other monetary benefits that have already accrued to him during service would also be lost or deprived.

8. Next, Rule 69 of the Tamil Nadu Pension Rules, 1978, relates to payment of provisional pension when disciplinary proceedings are pending and there is nothing mentioned anywhere in that rule about earned leave and as such, the same does not have any relevance to the issue now under consideration.

9. It is apparent on a reading of Rule 56(1)(c) of the Fundamental Rules that it empowers to continue in service, a Government Servant, who has attained the age of superannuation, till the completion of disciplinary proceedings or criminal prosecution, so that depending on its outcome, a decision regarding imposing any penalty on such delinquent Government Servant could be taken, but there is nothing therein to infer that earned leave of the said Government Servant could be withheld during that period.”

8. The Division Bench has also referred to the judgment of the Supreme Court in ***State of Jharkhand and others V. Jitendra Kumar***



W.A.No.579 of 2020

Srivastava and another, reported in ***(2013) 12 SCC 210***, wherein the

Hon'ble Supreme Court has pointed out that a right under Article 300 A of the Constitution of India, cannot be taken away by executive instructions. The only contention that remains to be considered is the contention of the learned Government Pleader based on Rule 69(1)(b) of the Tamil Nadu Pension Rules. Rule 69(1)(b) of the Tamil Nadu Pension Rules, reads as follows:

“69. Provisional pension where department or judicial proceeding may be pending:

(b) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided that no such gratuity, shall be withheld in respect of a Government servant who has been permitted to retire without prejudice to the departmental or judicial proceedings pending against him, where such departmental or judicial proceedings are only for administrative lapses not involving any pecuniary loss to the Government;

Provided further that where a Government



W.A.No.579 of 2020

servant, against whom a departmental or judicial proceedings involving pecuniary loss to Government is pending is permitted to retire without prejudice to such departmental or judicial proceedings, a portion of gratuity may be authorized after deducting the maximum computed financial loss to the Government for which the Government servant is held liable, along with unrecovered Government dues if any, of such Government servants, with interest.”

9. A very reading of the Rule would show that it is only the gratuity that could be retained by the Government till the conclusion of the Departmental or Judicial proceedings. Therefore, at no stretch of imagination can it be said that the Government has a power to retain the Earned Leave Encashment, the General Provident Fund and the Family Benefit Fund. Though the respondent has couched his prayer in the Writ Petition in very wide terms, the Writ Court had taken care to confine it only to the Earned Leave Encashment, the General Provident Fund and the Family Benefit Fund.



W.A.No.579 of 2020

10. We are therefore unable to fault the Writ Court for having allowed the Writ Petition. We see no merit in the Appeal, the Writ Appeal fails and it is dismissed. There will be a direction to the Government to disburse the Earned Leave Encashment, General Provident Fund and Family Benefit Fund, to which the respondent is entitled to with interest at 9% per annum from the date on which it is due till date of payment. Such payment shall be made within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) (S.S.K., J.)
06.02.2023

jv

Index : No

Internet : Yes

Speaking order

Neutral Citation: Yes

Note: Time Bound case



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W.A.No.579 of 2020

To

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Government of Tamilnadu,
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