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W.A.No. 3401 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM :

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

**Writ Appeal No.3401 of 2023
and
CMP.No.27813 of 2023**

1. The District Collector,
Ariyalur District.

2. The Assistant Director of Survey and land Records,
District Collector Complex,
Ariyalur District.

.. Appellants

Versus

K. Pugazhendhi

.. Respondent

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 27.06.2022 made in W.P. No.17513 of 2020 and allow the Writ appeal.

For Appellants : Mr. Silambanan,
Additional Advocate General assisted by
Mrs. S. Anitha,
Special Government Pleader.

For Respondent : Mr. A. Gokula Krishnan



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JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J.)

This Writ Appeal has been filed challenging the order dated 27.06.2022 passed by the learned Judge in W.P. No. 17513 of 2020.

2.The facts of the case in a nut-shell are that the respondent was appointed as Surveyor on 01.12.1982 and made permanent on 01.07.1984. On 09.10.2007, he was placed under suspension by the Assistant Director of Survey and Land Records for the alleged offence under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and he was released from suspension as per the proceedings in R.C. No. A4/6520/2007 dated 27.06.2008. However, he was not permitted to retire on attaining the age of superannuation on 30.06.2013 and was retained in service under rule 56(1)(c) of the Fundamental Rules, as per the order of the first appellant dated 30.11.2012. Thereafter, the criminal case in Spl.Case No.10 of 2012 ended in conviction by judgment dated 13.06.2017 passed by the learned Chief Judicial Magistrate, Ariyalur, thereby sentencing the respondent to undergo simple imprisonment for a period of five years and to pay a fine of Rs.10,000/- in default to undergo further one year simple imprisonment for the offence under



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simple imprisonment and to pay a fine of Rs.10,000/- in default to undergo further one year simple imprisonment for the offence under section 13(2) r/w 13(1)(d) of the Act. The sentence was directed to be run concurrently. As a result of the same, the respondent was dismissed from service vide proceedings dated 26.03.2018. The respondent preferred appeal in C.A.No.24 of 2017, which was partly allowed by modifying the sentence to three years simple imprisonment by judgment dated 23.10.2017. On further appeal in Crl.A.No.1419 of 2018 arising from S.L.P.(Crl)No. 5387 of 2018 before the Hon'ble Supreme Court, the sentence was further modified into one year and six months simple imprisonment by order dated 12.11.2018. While so, the respondent made a representation dated 05.06.2020 to the authorities praying to disburse the encashment of earned leave, special provident fund and gratuity, but the same was not considered. Hence, he filed W.P.No.17513 of 2020, which was disposed of, by the learned Judge, by directing the authorities to disburse the encashment of earned leave, Special Provident Fund and Gratuity within a period of twelve weeks. Aggrieved by the order so passed by the learned Judge, the appellant authorities have filed the present writ appeal before this Court.

3.The learned Additional Advocate General appearing for the appellants

<https://www.mhc.tn.gov.in/judis>

submitted that as per Rule 21 of the Tamil Nadu Pension Rules, 1978, a



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Government servant, who is dismissed or removed from service, shall forfeit his past service. Further, as per Rule 40 of the said Rules, a Government Servant who is dismissed or removed from service, shall forfeit his pension and gratuity. Hence, the respondent, who has been dismissed from service, is not entitled to any benefits as per the Tamil Nadu Pension Rules. Without properly appreciating the same, the learned Judge erred in allowing the claim of the respondent / writ petitioner in his favour, by the order impugned herein, which will have to be set aside. It is also submitted that the respondent has already been paid Rs.1,34,619/- towards General Provident Fund on 20.11.2017 and that, he was also paid Rs.8,141/- on 31.12.2020 towards contribution of Special Provident Fund.

4.On the other hand, the learned counsel for the respondent submitted that even though the respondent was convicted and dismissed from service, he is entitled for Death-cum-Retirement Gratuity, Terminal leave salary, Special Provident Fund and Subsistence allowance till the disposal of the SLP. In support of the same, the learned counsel placed reliance on the earlier orders passed by this court, more particularly, in WA (MD) No.105 of 2019 dated 31.07.2019, in the case of the Secretary to Government, Revenue Department and others v. K.Palaniyandi. Therefore, the order of the learned Judge does not



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5. Heard the learned counsel on either side and perused the materials available on record.

6. Admittedly, the criminal case registered against the respondent ended in conviction and the sentence of simple imprisonment of five years, imposed on him, ultimately, reduced to one year and six months, by the order of the Hon'ble Supreme Court dated 12.11.2018 in CrI.A.No.1419 of 2018 arising out of SLP (CrI) No.5387 of 2018. The departmental proceedings initiated against the respondent ended in the order of dismissal from service.

7. The respondent sought for disbursement of leave salary, gratuity and special provident fund, which was not considered by the authorities by stating that the respondent is not entitled for such benefits, as per Rules 21 and 40 of the Tamil Nadu Pension Rules, 1978. However, the learned Judge disposed of the said writ petition, by directing the appellants to pass appropriate orders on the respondent's representation, seeking disbursement of the encashment of earned leave, special provident fund and gratuity, after having held that the respondent is entitled for the same. While so, the learned Judge has relied on the judgment passed by a Division Bench of this court in WA (MD) No. 105 of



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8.This court perused the aforesaid judgment in WA (MD) No.105 of 2019, wherein, after referring to the relevant legal provisions, and the earlier decisions passed on the issue at hand, the Division Bench has categorically held that 'even a person who is dismissed from service, is also entitled to the encashment of leave salary'. It was also observed therein that the Tamil Nadu Pension Rules, 1978 cannot be extended beyond its scope; and 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. For better appreciation, the relevant passage of the said judgment is extracted below:

"9.The point for consideration is as to whether the Writ Court is justified in granting the relief to the writ petitioner in respect of his claim over the Encashment of Leave Salary and Special Provident Fund.

10.There is no dispute to the fact that the writ petitioner on the date of his superannuation, was placed under suspension and consequently, was not permitted to retire. The said exercise was made against the writ petitioner by invoking the Rule 56(1)(c) of the Fundamental Rules. The said Rule and Instruction stated therein read as follows:-

"(c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension,

(i) on a charge of misconduct; or

..(ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or

(iii) against whom an enquiry into grave charges is contemplated or is pending; or

(iv) against whom a complaint of criminal offence is under investigation or trial.

*shall not be permitted by the *appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of*



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misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Sub-ordinate service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.

Explanation:-For the purpose of this clause, the expression 'criminal 'misconduct' shall have the same meaning as in Section 13 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).

Instruction under Rule 56 (1) (c)-Whether a Government servant referred to in clause (c) is fully exonerated or not, he shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of retirement and the salary during that period shall not exceed the pension which has accrued to the Government servant on that date."

11.Perusal of the said instruction would show that a Government Servant referred to in clause 56(1)(c) shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings. It is further seen from the said instruction that during such extension period, the service rights, which have accrued to the Government Servant, shall freeze at the level reached on the date of retirement. It is further contemplated therein that the salary during that period shall not exceed the pension which has accrued to the Government Servant on that date. Here it is pertinent to note that the "service rights" referred to in the said instruction deemed to have been frozen is to be construed not in respect of the monetary benefits already accrued in the account of the Government Servant, such as Earned Leave Salary etc., and on the other hand, the term 'service rights' referred to therein is to mean as referable to increment, promotion etc. Certainly, 'service benefits' already derived cannot be treated at par with expected or anticipated 'service rights' to prevent the Government Servant from encashing such leave salary benefits already accrued in his account. It is to be noted at this juncture that the above instruction also contemplates that the salary during that period not to exceed the pension, which has accrued to the Government Servant.



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12. At this juncture, it is relevant to note Rule 86(a) of the Fundamental Rules with Explanation, which reads as follows:-

'86 (a) (i) Leave at the credit of a Government servant in his leave account, other than earned leave and leave on private affairs shall lapse on the date of retirement or on the date of termination of the extension of service, as the case may be. The competent authority (leave sanctioning authority) shall suo motu draw and disburse the cash benefits of encashment of earned leave and leave on private affairs at the credit of the Government servants in Groups B,C and D without formal sanction orders on the date of retirement or on the date of termination of the extension of service, as the case may be, or on the next working day, following the date of retirement or the date of termination of extension of service if the date of retirement or the date of termination of extension of service happens to be a holiday. In 128 respect of Group A officers, the Accountant General or Pay and Accounts Officer, as the case may be, shall suo motu issue the pay slips for encashment of earned leave and leave on private affairs, as aforesaid, at the credit of the Government servants without formal sanction orders, on the date of retirement or on the date of termination of the extension of service, as the case may be, or on the next working day, following the date of retirement or the date of termination of extension of services if the date of retirement or the date of termination of extension of service happens to be a holiday.

(ii) The benefit of encashment of earned leave at the credit of a Government servant on the date of retirement or on the date of termination of extension of service, as the case may be, shall be subject to a maximum of 240 days and shall be eligible for cash equivalent of full leave salary which shall be based on Pay, Dearness Allowance, House Rent Allowance and City Compensatory Allowance for the entire period of leave at credit.

(iii) The benefit of encashment of leave on private affairs on the date of retirement or on the date of termination of extension of service, as the case may be, shall be subject to 50 per cent of the leave on private affairs standing to the credit of the Government servant on such date subject to a maximum of 90 days, with full leave salary in cash which shall be based on Pay, Dearness Allowance, House Rent Allowance and City Compensatory Allowance. While calculating the leave on private affairs for the above purpose, the fraction of half-a-day shall be rounded off to



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one day.'

"Explanation-

For the purpose of encashment of earned leave and leave on private affairs provided in this rule, the Government servants of the following categories shall also be eligible:-

(i) cases where the services of a Government servant has been extended in the interest of public service beyond the date of superannuation;

(ii) voluntary or premature retirement;

(iii) where the services of a Government servant are terminated by notice or by payment of pay and allowances in lieu of notice or otherwise in accordance with the terms and conditions of his appointment;

(iv) in the case of death of a Government servant while in service, to the family of the deceased;

(v) in the case of leave preparatory to retirement;

(vi) in cases where the Government servant has been compulsorily retired from service as a measure of punishment under Rule 8 of the Tamil Nadu Civil Services (D&A) Rules.

(vii) in cases where the Government servant has been retired on medical invalidation;

(viii) the Government servants who are discharged owing to the abolition of a permanent post or retrenched due to the abolition of a Government department or scheme.

[vide G.O. Ms. No. 345, P & AR (Fr. SPL.), dated 31.07.1990, e.e.f.29.05.1989.]

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 seniorio of dismissal of



his service, cannot be denied to be paid on his request, merely because, his service is retained.

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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 and 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.

17. Next contention of the appellants is in respect of Rule 7 of the Tamil Nadu Leave Rules, 1933. A careful perusal of the Rule 7 of the said Rules would again show that even the Government Servant, who is terminated from service or compulsorily retired from service as a measure of punishment, is also entitled for encashment of Earned Leave and leave on private affairs. Therefore, the entitlement of such Government Servant to encash such Earned Leave and leave on private affairs is not altered even assuming that he is punished by way of termination of his service. Therefore, we find that the contention raised by the appellants on this ground is also liable to be rejected.

18. It is to be noted at this juncture that there is no total prohibition or denial of the benefit sought for by the writ petitioner in any of the provisions made under the relevant rules. It is only a time of disbursement of such benefit is stated. Even as per the rules, these benefits sought by the writ



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petitioner become payable automatic at the relevant point of time. Therefore, when the entitlement for such payment is not in question and only the time of disbursement is postponed under a given circumstance, especially when the retention of those benefits is not having a bearing on any eventuality, the Court can interfere and direct such payment even before the relevant time for disbursement of such payment, when the beneficiary seeks to get the same immediately. When the entitlement is not in dispute, it makes no difference whether it is paid at the request of the beneficiary or at a latter date viz., relevant time, at which, it is liable to be paid.

19.The learned Single Judge of this Court in a decision reported in 2016(1) LLJ 730 (Mad) (cited supra) has dealt with the above issue and found at paragraphs 15 and 16 as follows:-

"15. On the other hand, if an employee has chosen to accumulate his earned leave to his credit, the encashment of the same cannot be deprived on the dismissal, since his Earned Leave to his credit is nothing but his property as held by the Full Bench of the Punjab and Haryana High Court.

16. Likewise, in this case, the issue is only relating to payment of Earned Leave Encashment Benefit. The same principle that is applicable to Earned Leave Encashment Benefit is also applicable to the payment of General Provident Fund and to the contribution made by a Government employee to Special Provident Fund. In the case of industrial employees, the contribution made by the industrial workman to the Provident Fund from his wages could not be deprived by the employer even if he is dismissed from service. "

20.The said decision was approved by the Division Bench of this Court in W.A(MD)No.1423 of 2018 dated 22.10.2018, wherein the Division Bench has observed as follows:-

'Challenging the order of the learned Single Judge, by which the retiral benefits were sought to be disbursed to the respondent by the appellants notwithstanding the pendency of the criminal case, pending on the date of superannuation, the present appeal has been filed.

2.The learned Special Government Pleader appearing for the appellants would submit that the order of the learned Single Judge cannot be sustained in the eye of law as the respondent was not permitted to retire, pending criminal case.



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3. *The learned Counsel appearing for the respondent would submit that the encashment of earned leave is acquiring a property owned by a person and therefore, notwithstanding the order of dismissal, the same cannot be denied. Reliance has been made on the order of the learned Single Judge in T.Veeravinothan Vs. Registrar of Co-operative Societies, Kilpauk, Chennai and others reported in 2016-1-LLj-730 (Mad), wherein it has been held as follows:-*

'15. On the other hand, if an employee has chosen to accumulate his earned leave to his credit, the encashment of the same cannot be deprived on the dismissal, since his Earned Leave to his credit is nothing but his property as held by the Full Bench of the Punjab and Haryana High Court.'

4. *Considering the above, we are of the view that the order of the learned Single Judge giving a direction to the respondents to disburse all the benefits cannot be sustained, except to the extent of payment of earned leave salary alone. In the light of the decision supra, the encashment of earned leave is to be treated as a property owned by a person even one assumes a worst situation by which the employee is dismissed.*

5. *In such view of the matter, this Writ Appeal stands allowed in part. Accordingly, the appellants are directed to release the earned leave salary of the respondent within a period of eight [8] weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.*

21. *The another Division Bench of this Court in W.A.No.207 of 2016 dated 26.02.2016, has considered the very same issue and observed as follows:-*

'The instant intra-court appeal arises from the order dated 2nd June, 2015 made in W.P.No.15457 of 2015.

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*



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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.'

22.The above said decision of the Division Bench was put to challenge before the Apex Court, which, inturn, dismissed the Special Leave Petition on 06.07.2017 by observing that no ground to interfere with the impugned order of the Division Bench.

23.In a recent decision of the Division Bench reported in 2019-Writ.L.R. 825 [State of Tamil Nadu vs. V.Mahalingam], the same issue was considered and it has been observed at paragraph 5 as follows:-

"5. Before proceeding further, it would be necessary to examine the nature and legal basis for payment of 'earned leave'; to Government Servants. Rules 7 to 12 of the Tamil Nadu Leave Rules, 1933, contain the statutory provisions for earned leave. It could be seen from the aforesaid provisions that the leave account of every permanent Government Servant shall be credited with earned leave in advance in two instalments of fifteen days each on the first day of January and first day of July every year. The leave at the credit of a



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Government Servant at the close of the previous half year shall be carried forward to the next half year, subject to the condition that the leave so carried forward plus the credit for the half year do not exceed the maximum limit of 240 days. The said rules further provide that if the leave standing to the credit of the Government Servant is not taken within a year as per the Service Rules, it may be encashed or accumulated. The accumulated leave may be availed by the Government Servant during his tenure of service or at the time of retirement or leaving the employment which obviously means that the right of the Government Servant to receive the same stands vested with him during that period itself which he can utilize at any time he chooses. The Hon'ble Supreme Court of India in State of Jharkhand Vs. Jitendra Kumar Srivastava [(2013) 12 SCC 210] has made it abundantly clear that leave encashment cannot be taken away without any statutory provision. In short, 'earned leave'; which is created by statute, partakes the character of an emolument protected as a right to property of the concerned Government Servant under Article 300-A of the Constitution. It has been provided in Rule 86(a)(i) of the Fundamental Rules that the Competent Authority shall suo motu draw and disburse the cash benefits and encashment of the earned leave at the credit of the Government Servant without formal sanction orders on the date of retirement or the date of termination of extension of service, as the case may be. The removal of a Government Servant from service as a measure of punishment or conclusion of disciplinary proceedings after extending his service on attaining the age of superannuation for that purpose, would naturally amount to 'termination of extension of service', and in terms of that rule, the Competent Authority on that date ought to have suo motu disbursed the cash benefit and encashment of earned leave, if the same had not been availed by the Petitioner earlier. The Second Respondent has wrongfully refused to pay the earned leave to the Petitioner, which he was legitimately entitled to receive, even on that date."

24. Therefore, we find the present issue is also certainly similar to the one in the above cases and thus, we find that the order of the Writ Court in granting the relief to the writ petitioner need not be interfered with. Accordingly, this Writ Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed."

9. In the light of the aforesaid judgment, which is squarely applicable to



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the facts of the present case, this court finds no reason to interfere with the order passed by the learned Judge, except granting outer timeline to the appellant authorities for passing appropriate orders on the respondent's representation dated 05.06.2020.

10. Accordingly, the appellants are directed to consider the respondent's representation dated 05.06.2020, if not considered earlier, and pass appropriate orders, as directed by the learned Judge, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
11.12.2023

Index : Yes / No
Internet : Yes / No
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To

1. The District Collector,
Ariyalur District.
2. The Assistant Director of Survey and land Records,
District Collector Complex,
Ariyalur District.



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