



W.P.(MD)No.14757 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:01.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.14757 of 2020

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... Petitioner

Vs.

1.The Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, St. George Fort,
Chennai.

2.The Commissioner of Adi Dravidar
Welfare Department,
Chepauk, Chennai – 05.

3.The District Adi Dravidar and Tribal Welfare Officer,
Madurai,
Madurai District.

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to call for the records relating to impugned order passed by the second respondent in Na.Ka.No.E1/82/2019, dated 20.02.2020 and quash the same and consequently, direct the respondents to disburse the petitioner's encashment of earned leave salary, unearned leave on private affairs and



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Special Provident Fund along with interest at the rate of 18% from the date of his superannuation.

For Petitioner : Mr.B.Vinoth Kumar
For Respondents : Mrs.K.Christy Theboral,
Additional Government Pleader

ORDER

This writ petition has been filed to quash the impugned order passed by the second respondent in Na.Ka.No.E1/82/2019, dated 20.02.2020 and consequently, to direct the respondents to disburse the petitioner's encashment of earned leave salary, unearned leave on private affairs and Special Provident Fund along with interest at the rate of 18% from the date of his superannuation.

2. The case of the petitioner is that he was appointed as Junior Assistant in the respondent Department on 08.11.1982 and thereafter, promoted as Assistant in the year 1999 and thereafter, as Superintendent in the year 2005 and retired from service on 31.05.2014. While he was working as Superintendent in the District Adi Dravidar Welfare Office,



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Sivagangai, an F.I.R was registered for the offence under Sections 120-B, 467, 468 and 471 of I.P.C and Sections 13(2)(c) and (d) of Prevent of Corruption Act, 1988 on the allegation of malpractices and misappropriation of Scheme Fund in the Adi Dravidar Schools and Hostels in Sivagangai District. After conducting investigation, charge sheet was filed in C.C.No.8 of 2011 on the file of the Special Court for Vigilance and Anti Corruption, Sivagangai, in which, the petitioner was arrayed as third accused and the said criminal case was not finalised at the time of retirement of the petitioner. However, at the end of his service on 27.05.2014, the second respondent issued suspension order by invoking Rule 17(e) of the Tamil Nadu Civil Services(Discipline and Appeal) Rules in Proceedings No.C1/10053/2014, dated 27.05.2014. Hence, monetary benefits were not paid to the petitioner. Thereafter, the petitioner filed a writ petition in W.P(MD)No.2155 of 2016, for disbursement of G.P.F contribution, S.P.F., encashment of earned leave salary, unearned leave. This Court vide order, dated 28.02.2019, issued a direction to consider the representation of the petitioner and the said representation was rejected vide the impugned order, dated 20.02.2020.



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Challenging the same, the petitioner has filed this writ petition with the aforesaid prayer.

3. The learned counsel appearing for the petitioner would submit that though the petitioner is not entitled for gratuity and provident fund, he is entitled for encashment of earned leave salary, unearned leave on private affairs. However, the total rejection of the petitioner's claim is not sustainable one and hence, prayed for appropriate orders.

4. The learned Additional Government Pleader appearing for the respondents would submit that as per Fundamental Rule 56(1)(c), the petitioner is not entitled for encashment of earned leave salary, unearned leave on private affairs and hence, the prayer sought for by the petitioner cannot be granted. Therefore, there is no irregularity or infirmity in the order passed by the second respondent and hence, prayed for dismissal of this writ petition.



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5. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents and perused the materials placed before this Court.

6. Admittedly, the petitioner entered into service as Junior Assistant in the year 1982. He retired from service on 31.05.2014. Prior to his retirement, the petitioner was implicated in a criminal case in C.C.No.8 of 2011 on the file of the Special Court for Vigilance and Anti Corruption, Sivagangai, for the offence under Sections 120-B, 467, 468 and 471 of I.P.C and Sections 13(2)(c) and (d) of Prevent of Corruption Act, 1988. In view of the pendency of the criminal case, retiral benefits were not disbursed to the petitioner. Hence, earlier, the petitioner made a claim for disbursement of G.P.F contribution, S.P.F., encashment of earned leave salary, unearned leave. The said claim was rejected by the ...respondent vide the impugner order stating that, since the service of the petitioner was retained by the petitioner under Fundamental Rule 56(1)(c), the petitioner is not entitled for the claim made by him.



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7. However, when the same issue came up for consideration before the Hon'ble Division Bench in W.A.No.207 of 2016, wherein this Court issued a direction to the authorities to disburse the eligible encashment of earned leave and encashment of unearned leave on private affairs.

8. In view of the same, without interfering with the impugned order passed by the second respondent, this Court directs the second respondent to disburse the eligible encashment of earned leave and encashment of unearned leave on private affairs, to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

9. With the above direction, this writ petition is disposed of.
No Costs.

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NCC:Yes/No
Index:Yes/No
PM



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M.DHANDAPANI,J.

pm

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