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W.P.No.1259 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.1259 of 2021

N.Rathina Sabapathy

... Petitioner

Vs.

1.The Principal Secretary to Government,
Food and Co-operation,
State of Tamil Nadu,
Fort St.George,
Chennai 600 009.

2.The Registrar,
Co-operative Societies,
N.V.Natarajan Maligai,
No.170, EVR Periyar High Road,
Kilpauk, Chennai - 10.

3.The Deputy Registrar,
Co-operative Societies Housing,
Coimbatore Circle,
Coimbatore.

4.The Joint Registrar,
Co-operative Societies,
Coimbatore Region,
K.K.Pudur, Coimbatore - 641 038.

... Respondents



W.P.No.1259 of 2021

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 2 to 4 to disburse the gratuity, special provident fund, encashment of earned leave, within a time as may be stipulated by this Court.

For Petitioner : Mr.M.Sudhan
For Respondents : Mr.R.Neethi Perumal, GA

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Mandamus to direct the respondents 2 to 4 to disburse the gratuity, special provident fund, encashment of earned leave, within a time frame as may be stipulated by this Court.

2. Heard Mr.M.Sudhan, learned counsel for the petitioner and Mr.R.Neethi Perumal, learned Government Advocate for the respondents.

3. The petitioner had attained the age of superannuation in the year 2013. However, the petitioner has not been allowed to retire in view of the pending charges and also a pending criminal case. In respect of the pending criminal case, no disciplinary action has been initiated against the petitioner. Apart from the criminal case, there were two other charges



W.P.No.1259 of 2021

pending against the petitioner and he got discharged from those charges in view of the subsequent surcharge proceedings taken against the petitioner and the Secretary who had misappropriated the funds has paid the loss to the Society. In view of the same, the other two charges against the petitioner got dropped.

4. The learned counsel for the petitioner submitted that despite the petitioner attained the age of superannuation as early as in the year 2013, the petitioner was not allowed to retire by citing a pending criminal case and he was also not paid with any terminal benefits including gratuity.

5. The learned Government Advocate for the respondents submitted that since the criminal case is pending against the petitioner on the allegation of corruption, the matter cannot be taken so lightly and the petitioner should not be given with terminal benefits like gratuity etc. It is further submitted that so far as GPF amount is concerned, the same is already settled to the petitioner and hence, the petitioner cannot have any grievance over the same. As per Fundamental Rule 56 (1)(c) the



W.P.No.1259 of 2021

petitioner is not entitled for payment of gratuity during the pending criminal proceedings and he is also not eligible for encashment of leave.

6. But the position of law in this point has been well settled and the Hon'ble Supreme Court has held in the case of ***State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another, reported in (2013) 12 SCC 220***, that, *the gratuity and pension are not bounties. The employee earns these benefits by dint of his long, continuous, faithful and unblemished service. It is thus a hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.*

7. Even if it is presumed that a departmental proceedings would be initiated against the petitioner in the proved misconduct, he could only be dismissed from service and the petitioner cannot be deprived of his earned leave benefit which he earned in view of his long continuous service. So far as earned leave is concerned, it is a "property" earned by



W.P.No.1259 of 2021

the person and kept in his leave account. So encashment of the said leave is irrespective of the result of the pending criminal proceedings and hence, the respondents cannot withhold the same by citing a reason of pending criminal proceedings.

8. The earned leave of the employee remains intact irrespective of the pending criminal proceedings. It has to be either given to him by releasing encashment or he should be allowed to avail those leave. The second possibility has come to closure due to the attainment of superannuation. So the only option is to encash the leave. Hence, there cannot be any rule which can say the earned leave of the employee would cease to become available for encashment. Even if any such rule exists, in the language of the Supreme Court, it is only a 'dead letter'. Since earned leave invested by the petitioner is with an intention to encash them at the closure of his service, it has to be duly encashed and released to this petitioner. As the earned leave is meant for encashment, when such benefit is available, the employer cannot deny the same by citing the reason that the criminal proceedings are pending. The permissible leave



W.P.No.1259 of 2021

has been invested only for encashment by the petitioner and hence it is a property, within a meaning of Article 31(1). So the respondents cannot deny the same to the petitioner.

9. In this case, despite the petitioner has attained the age of superannuation in the year 2013 and the criminal proceedings have been initiated in 2009 itself, it has not attained any finality. So far, no disciplinary action has been initiated in connection with the pending criminal proceedings. When such is the case, it cannot be said that the pending criminal proceedings are bar to disburse the terminal benefits to the petitioner. So far as the gratuity is concerned, it might be claimed by the respondents that it is attached with the unblemished service of the employee and hence it cannot be disbursed during the pending criminal proceedings. However, there is no bar to disburse the earned leave encashment.

10. In view of the above stated reasons, this Writ Petition is partly allowed and the respondents 2 to 4 are directed to disburse earned leave encashment benefit to the petitioner irrespective of the pending criminal



W.P.No.1259 of 2021

proceedings and pass appropriate orders for sanctioning the said benefit within a period of four weeks from the date of receipt of a copy of this order. No costs.

09.01.2024

Index : Yes /No
Internet : Yes/No
Speaking / Non-speaking
Neutral Citation : Yes / No
gsk

To

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