



W.P.No.5505 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

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Paul Premkumar

... Petitioner

Vs.

1.The Government of India,
Represented by its Secretary,
Department of Fertilizers,
Ministry of Chemicals and Fertilizers,
Shastri Bhavan,
New Delhi – 110 001.

2.The Chairman and Managing Director,
Madras Fertilizers Limited,
Manali, Chennai – 68.

3.The General Manager (Personnel and Administration),
Madras Fertilizers Limited,
Manali, Chennai – 68.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to consider the representation dated 02.01.2021 and consequently direct the respondents to release all the retirement benefits due to the petitioner such as surrender leave salary, payment of gratuity, superannuation pension etc., immediately.



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For Petitioner : Mr.V.Prakash
Senior Counsel
for Mr.R.Thomas

For Respondents :
For R1 : Dr.D.Simon
Central Government Standing Counsel
(CGSC)

For R2 and R3 : Mr.Jayesh B.Dolia
Senior Counsel
Assisted by M/s.N.Varsha
for M/s.Aiyar & Dolia

ORDER

The petitioner herein while working as a Joint General Manager in M/s.Madras Fertilizers Limited, was subjected to disciplinary proceedings by issuing a Charge Memo dated 16.05.2018 containing 7 charges.

2. The said disciplinary proceedings concluded and an order dated 29.01.2019 was passed by the second respondent imposing penalty of reduction to lower stage in the time scale of pay for a period of 4 years on the petitioner which is a major penalty under Clause No.2.4.23(a) of the MFL Employees (Conduct, Discipline and Appeal) Rules, 1977.



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3. Thus, the basic pay of the petitioner was reduced from Rs.64,720/- to Rs.57,490/- as on the date of retirement of the petitioner on attaining the age of superannuation. The said order came to be passed by the second respondent only after the petitioner was permitted to retire from services with effect from 31.05.2018. Thereafter, though the petitioner filed an appeal against the said order of penalty, the same was withdrawn by the petitioner on 17.12.2020 and the said penalty imposed on the petitioner has become final. It is, thereafter, the petitioner made a claim for payment of terminal benefits by submitting the representation dated 02.01.2021 to the respondents.

4. As the said representation was not considered by the respondents, the petitioner has approached this Court by filing the present writ petition seeking a writ of mandamus, to direct the respondents to consider the said representation dated 02.01.2021 and consequently to direct the respondents for release of all retirement benefits due to the petitioner on his superannuation.

5. Mr.V.Prakash, learned Senior Counsel appearing for the petitioner contended that the petitioner was allowed to retire from service with effect



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from 31.05.2018 on attaining the age of superannuation and thereafter, the disciplinary proceedings that were pending against the petitioner have come to an end on 29.01.2019 by imposing major punishment and the said punishment has become final and therefore, the petitioner is entitled for payment of all terminal benefits on his superannuation, but the respondents have not paid any of the terminal benefits and withholding the same on the ground that certain criminal proceedings are pending against the petitioner before the competent Court. According to the learned Senior Counsel appearing for the petitioner, the respondents are not justified in withholding the terminal benefits payable to the petitioner on the ground of pendency of criminal proceedings.

6. On the other hand, Mr.Jayesh B.Dolia, learned Senior Counsel appearing for the second and third respondents contended that, because of the acts of the petitioner, the respondents have suffered huge financial loss and basing on the very same facts which are subject matter of disciplinary proceedings, criminal proceedings were also initiated and the same are pending against the petitioner and the petitioner is charged of offence under Sections 420, 201 read with Section 120B of the Indian Penal Code, 1860 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and



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the final report in the said criminal proceedings is also filed and the same is pending for trial. Thus, it is contended that the petitioner is likely to be convicted in the said criminal case and therefore, the petitioner would not be entitled for any of the terminal benefits claimed by the petitioner in the present writ petition. It is also further contended that in terms of Section 4(6) of the Payment of Gratuity Act, 1972, the gratuity that is payable to an employee shall be wholly or partially forfeited to the extent of the damage or loss so caused by the employee.

7. In support of his contention, the learned Senior Counsel appearing for the second and third respondents also placed reliance on the decision of the Hon'ble Apex Court in the case of **Chairman-cum-Managing Director, Mahanadi Coalfields Limited Vs. Sri Rabindranath Choubey** in Civil Appeal No.9693 of 2013 dated 27.05.2020.

8. This Court has carefully considered the submissions made on either side and also perused the entire material on record.



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9. There is no dispute on factual aspects, especially, the fact that the petitioner was permitted to retire from service on attaining the age of superannuation on 31.05.2018. It is also not in dispute that the respondents have imposed major penalty of reduction in pay of the petitioner by 4 stages and the said punishment has become final. The petitioner has no objection for giving effect to the said punishment. It is also admitted fact that there are no rules and provisions that would entitle the respondents to withhold the terminal benefits payable to the petitioner on the ground of pendency of criminal proceedings against the petitioner.

10. In the absence of any such provision entitling the respondents to withhold the terminal benefits of the petitioner, which are due and payable to the petitioner on attaining the age of superannuation, the respondents are not justified in withholding the terminal benefits on the ground of mere pendency of the criminal proceedings against the petitioner. In case, the respondents are of the view that that petitioner has caused huge financial loss to the respondents, it is always open for the respondents to frame appropriate charges in that regard and conduct an enquiry and then pass appropriate orders either ordering for enquiry or otherwise. But in the instant case, the respondents have



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framed charges against the petitioner, and concluded the disciplinary proceedings and deemed it fit to impose punishment of reduction in the pay of the petitioner by 4 stages and passed an order on 29.01.2019.

11. If the respondents are of the view that the petitioner has committed such grave misconduct that would affect for drawing the terminal benefits on his retirement, the respondents ought to have passed appropriate orders imposing penalty/punishment of removal or dismissal of the petitioner from service. The respondents does not deem it fit to impose such major penalty on the petitioner to deprive him of the terminal benefits. But the respondents withholding the terminal benefits of the petitioner only on the ground of pendency of criminal proceedings against the petitioner. Having permitted the petitioner to retire from service, the question of imposing punishment of removal or dismissal at this stage does not arise.

12. In the absence of any provision entitling the respondents to withhold the terminal benefits payable to the petitioner, this Court does not find any justification for the respondents in withholding the terminal benefits of the petitioner.



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13. The decision of the Hon'ble Apex Court in the case of **Chairman-cum-Managing Director, Mahanadi Coalfields Limited** (cited supra) relied by the learned Senior Counsel appearing for the second and third respondents has absolutely no application to the facts of the case on hand. The said decision of the Hon'ble Apex Court was dealing with a situation where Section 4(6) of the Payment of Gratuity Act, 1972, was attracted and in the case of dismissal of an employee, the gratuity that is payable to an employee shall be wholly or partially forfeited to the extent of the damage or loss so caused by the employee. But in the instant case, admittedly, there is no order of removal or dismissal of the petitioner from service. Therefore, the decision of the Hon'ble Apex Court relied upon by the respondents has no application to the facts of the case on hand.

14. In the light of the above, this Writ Petition is allowed by directing the second and third respondents to pay all the terminal benefits that are payable to the petitioner as expeditiously as possible, at any rate within a period of eight weeks from the date of receipt of a copy of this order. However, it is made clear that in the event, the petitioner is convicted in the pending criminal



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proceedings, it is always open for the respondents to take appropriate action

against the petitioner in accordance with law. No costs.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To

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New Delhi – 110 001.
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MUMMINENI SUDHEER KUMAR, J.

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