



W.P. No.11518 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM:

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.No.11518 of 2019

V.Sivanandham

...

Petitioner

Vs.

1.Secretary to Government (Revenue),
Revenue Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.Additional Chief Secretary and
Commissioner of Revenue,
Revenue Administration,
Ezhilagham, Chennai – 600 005.

3.District Collector,
Kanchipuram Collectorate,
Kanchipuram District – 631 501.

4.District Backward Classes and
Minority Welfare Officer,
Collectorate, Kanchipuram – 631 501. ...

Respondents

PRAYER: Writ petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent Secretary to Government Letter No.6305/Ser-2(3)/2015-5, dated 06.06.2016 along with the Memo Na.Ka.13561/1999/W4 dated 30.01.2017 issued by the 3rd respondent herein and quash the same with a consequential direction to the respondents herein to fix the Regular Pension for the Petitioner forthwith without insisting the recovery of the amount disbursed to the petitioner in the year of 2003 under the head of Leave Salary encashment.



For Petitioner : Mr.C.V.Vijayakumar
For Respondents : Ms.R.L.Karthika
Government Advocate

ORDER

The writ petition has been filed to call for the records of the 1st respondent Secretary to Government Letter No.6305/Ser-2(3)/2015-5, dated 06.06.2016 along with the Memo Na.Ka.13561/1999/W4 dated 30.01.2017 issued by the 3rd respondent herein and quash the same with a consequential direction to the respondents herein to fix the Regular Pension for the Petitioner forthwith without insisting the recovery of the amount disbursed to the petitioner in the year of 2003 under the head of Leave Salary encashment.

2.The learned counsel appearing for the petitioner and the learned Government advocate appearing for the respondents advanced their arguments basing on the averments made in the affidavit and the counter affidavit filed on behalf of their clients.

3.The only issue to be considered in this writ petition is, whether the order impugned in this writ petition dated 06.06.2016 is in accordance with the G.O.No.409, Finance (Pension) Department, dated 31.07.2004 considered by the department or not.



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4. Admitted facts are not disputed in this case. The petitioner was subject to disciplinary action for certain charges and he was kept under suspension during the pendency of the disciplinary proceedings, the petitioner attained the age of Superannuation on 30.11.2002 and he was permitted by the Government to retire from service without prejudice to the pending disciplinary proceedings against him. The petitioner was permitted to encash to withdraw earned leave and other unearned leave Salary at the time of his retirement. Thereafter, the petitioner requested to regularize the period of suspension from 26.07.1999 to 31.05.2001. To consider the request of the petitioner, the petitioner is insisted to remit the amount encashed for earned leave and unearned leave amounts, which were paid to the petitioner and to send proposal for revising the pension after regularizing the service of the petitioner for the period of suspension.

5. The learned counsel appearing for the petitioner has placed the copy of G.O.409, Finance (Pension) Department, dated 31.07.2004.

6. On perusal of the same, the said G.O. reveals that though the employees, who are permitted to retire from service without prejudice to the disciplinary proceedings pending against them, they are permitted to avail the



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benefit of encashment of leave. As such, it is clear that the Government has decided to extend the benefit to the employees at the time of retirement, for encashment of leave upto a maximum of 330 days, when they are permitted to encash the earned leave and unearned leave to those employees, who are permitted to retire from service without prejudice to the disciplinary proceedings pending against them.

7. In view of the same, the respondents are not permitted to insist the petitioner to remit the amount, which was permitted by the respondents the petitioner to encash the earned leave and unearned leave.

8. In the considered opinion of this Court, the impugned order passed by the respondents is contrary to G.O.No.409, Finance (Pension) Department, dated 31.07.2004 and accordingly, the same is liable to be set aside.

9. For the above said reasons, this writ petition is allowed with the following directions:

1. The impugned order dated 06.06.2016 & 30.01.2017 passed by the first and third respondent respectively are hereby set aside.



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2.The respondents are directed to fix the regular pension for the petitioner forthwith considering his request for regularization of his suspension period from 26.07.1999 to 31.05.2001.

3.No costs.

Index: Yes/No

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Internet: Yes/No

sms

To

- 1.Secretary to Government (Revenue),
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Secretariat, Fort St.George,
Chennai – 600 009.
- 2.Additional Chief Secretary and
Commissioner of Revenue,
Revenue Administration,
Ezhilagham, Chennai – 600 005.
- 3.District Collector,
Kanchipuram Collectorate,
Kanchipuram District – 631 501.
- 4.District Backward Classes and
Minority Welfare Officer,
Collectorate, Kanchipuram – 631 501.
- 5.The Public Prosecutor,
High Court, Madras.



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BATTU DEVANAND,J.

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