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W.P.No.18459 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.18459 of 2020
and W.M.P.No.22903 of 2020

J.Vijayan

... Petitioner

Vs.

The Commissioner of Labour,
DMS Compound,
Teynampet,
Chennai – 600 006.
Respondent

...

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent the communication by the Commissioner of Labour in his proceeding vide Lr.No.E4/43900/19, dated 05.09.2020 and quash the same and consequently direct the respondent to disburse the Encashment of Leave Salary, Special Provident Fund, General Provident Fund, Unearned leave on private affairs, and death cum retirement gratuity of the petitioner.

For Petitioner : Mr.K.Sathish Kumar

For Respondent : Mr.S.Prabhakaran,



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Government Advocate

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ORDER

This writ petition has been filed to call for the records of the respondent the communication by the Commissioner of Labour in his proceeding vide Lr.No.E4/43900/19, dated 05.09.2020 and quash the same and consequently direct the respondent to disburse the Encashment of Leave Salary, Special Provident Fund, General Provident Fund, Unearned leave on private affairs, and death cum retirement gratuity of the petitioner.

2. The case of the petitioner is that the petitioner was initially appointed as Typist through Tamil Nadu Public Service Commission (For brevity TNPSC) on 22.12.186 and subsequently promoted as Junior Assistant on 18.04.1990. Thereafter, he got promoted as upgraded Assistant, Regular Assistant, upgraded Superintendent and subsequently promoted as Stamping Inspector (Inspector of Legal Metrology) on 27.07.2009. The petitioner worked from 22.12.1986 to 14.10.2010 with unblemished service records.

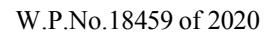
2.1. This being so, the petitioner was arrested by the Vigilance and Anti-Corruption Police on 15.10.2010 for the alleged offence under Section 7



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and 13(2) r/2 13(1)(d) of the Prevention of Corruption Act, 1988 and a case was also registered in Crime No.28/10, which was pending before the Special Court of Prevention of Corruption Act, Trichy till date. In view of the said arrest and remand, the petitioner was placed under suspension by the respondent vide order dated 18.10.2010 by invoking Rule 17(e)(2) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and subsistence allowance was also given to the petitioner from 15.10.2010 i.e., from the date of suspension under Rule 53(1) of Fundamental Rules.

2.2. This being the case, the respondent vide order dated 23.03.2019, not allowed the petitioner to retire from service on reaching the date of superannuation on the afternoon of 31.03.2019 and retained him in service until the criminal offence under trail is concluded. Since, he was not allowed to retire from service, the petitioner was not disbursed with Gratuity, GPF, SPF, Encashment of Earned Leave and Encashment of Un-Earned Leave on private affairs. Therefore, the petitioner sent a representation dated 09.12.2019, seeking disbursement of his retirement benefits. Subsequent to the said representation, the respondent has passed an order vide Lr.No.E4/43900/19 dated 05.09.2020, rejected the petitioner's request to disburse his retirement



3. Learned counsel for the petitioner would submit that except the General Provident Fund (GPF), the respondent has not disbursed other benefits viz., Gratuity, SPF, Encashment of Earned Leave an Encashment of Un-Earned Leave on Private Affairs to the petitioner, till date.

4. Learned Government Advocate appearing for the respondent has submitted a copy of the Government Order in G.O.(Ms) No.100, Human Resource Management (FR.II) Department, dated 07.09.2022, wherein it is clearly stated that the Government Servants who are dismissed or removed from service or who have resigned from service shall not be eligible for encashment of earned leave and leave on private affairs.

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



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6. At this juncture it is pertinent to extract the relevant portion of the G.O.(Ms) No.100, Human Resources Management (FR.II) Department, dated 07.09.2022 and the same reads as follows:

“Provided that the Government servants who are dismissed or removed from service or who have resigned from service shall not be eligible for encashment of earned leave and leave on private affairs:

Provided further that the encashment of earned leave and leave on private affairs shall be deferred to the Government servants who are not permitted to retire from service on attaining the age of superannuation but retained in service under Fundamental Rule 56(1) (C), till the enquiry into the charge of misconduct or criminal misconduct is/are concluded and final order passed thereon by the competent authority. The said benefit of encashment of earned leave and leave on private affairs shall be drawn and disbursed to such Government servants after regulating their suspension period”.

On perusal of the aforesaid Government Order dated 07.09.2022, it is clear and evident that the petitioner is not eligible for encashment of Earned Leave and Leave on private affairs . However, in regard to Special Provident Fund, the respondents are directed to settle the amount to the petitioner. Thereby, this Court is inclined to pass the following order:

“The Commissioner of Labour is hereby directed to settle the Special



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Provident Fund for which the petitioner is eligible as per the rules along with 5% interest from the date of retirement of the petitioner i.e., on 31.03.2019 to till the date of payment, within a period of two months from the date of receipt of a copy of this order.”

7. This writ petition is disposed of with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

19.11.2024 (vm)

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

To:

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