



W.P.No.26103 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.26103 of 2021

P.Chandrasekaran

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Petitioner

Vs.

1. The Principal Chief Conservator of Forest,
(Head of the Forest Department),
Chennai-600 015.

2. The Chief Conservator of Forest,
Vellore Circle, Vellore.

3. The District Forest Officer,
Tiruvannamalai Division,
Tiruvannamalai.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the 3rd respondent to claim and disburse the benefits of encashment of Earned Leave and Unearned Leave on private affairs at the credit of the petitioner, Provident Fund and Special Provident Fund accumulations and also to consider his claim for change of Headquarters during the period of suspension, all within a time frame.



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For Petitioner : Mr.M.Ravi

For Respondents : Mr.S.Rajesh, Government Advocate

ORDER

The petitioner has filed writ petition for seeking writ of mandamus by issuing direction against the 3rd respondent to disburse the benefits of encashment of Earned Leave and Unearned Leave on private affairs at the credit of the petitioner along with Provident Fund and Special Provident Fund accumulations and also to consider his claim for change of Headquarters during the period of suspension.

2. Heard, Mr.M.Ravi, learned counsel for the petitioner and Mr.S.Rajesh learned Government Advocate for the respondents and perused the materials available on record.

3.The petitioner who was working as a Forester, was kept under suspension in view of certain pending criminal cases in S.C.No.9/2019 on the file of learned Chief Judicial Magistrate/Special Judge, Tiruvannamalai. However, he attained the age of super superannuation on 31.01.2020, he was not allowed to retire in view of pending criminal cases. However, the law on point is disbursing the leave salary have been settled.



4. In this regard it is worthwhile to refer the earlier judgement of the

Hon'ble division Bench of this Court in W.A.(MD) No.903 of 2019, dated

06.09.2019, the operative portion of which is extracted herein:

"....3. The appellants cannot be aggrieved by the direction for payment of Provident Fund, Earned Leave encashment, Extraordinary Leave on Personal Affairs, as these entitlements of the respondent and similar issue was considered in several cases and latest of which in W.A. (MD) No.105/2019 dated 31.07.2019. The operative portion of the Judgment reads as follows:

"18. It is to be noted at this juncture that there is no total prohibition or denial of the benefit sought for by the writ petitioner in any of the provisions made under the relevant Rules. It is only a time of disbursement of such benefit is stated. Even as per the Rule, these benefits sought by the writ petitioner became payable automatic at the relevant point of time. Therefore, when the entitlement for such payment is not in question, and only the time of disbursement is postponed under a given circumstance, especially when the retention of those benefits is not having a bearing on any eventuality, the Court can interfere and direct such payment even before the relevant time for disbursement of such payment, when the beneficiary seeks to get the same immediately. When the entitlement is not in dispute, it makes no difference whether it is paid at the request of the beneficiary or at a latter date viz., relevant time at which it is liable to be paid.

19. The learned Single Judge of this Court in a decision reported in 2016 (1) LLJ (Madras) cited supra has dealt with the above issue and found at Paragraph 15 & 16 as follows:

"15. On the other hand, if an employee has chosen to accumulate his earned leave to his credit, the encashment of the same cannot be deprived on the dismissal, since his earned leave to his credit is nothing, but his property as held by the Full Bench of the Punjab & Haryana High Court.

16. Likewise, in this case, the issue is only relating to payment of earned leave encashment benefit. The same principle that is applicable to earned leave encashment benefit is also applicable to the payment of



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General Provident Fund and to the contribution made by a Government employee to Special Provident Fund. In the case Industrial employees, the contribution made by the industrial workman to the provident fund from his wages could not be deprived by the employer even if he is dismissed from service.

20. The said decision was approved by the Division Bench of this Court in W.A.(MD) No. 1423/2018 dated 22.10.2018 wherein the Division Bench has observed as follows:

Challenging the Order of the learned Single Judge by which the retiral benefits were sought to be disbursement to the respondent by the appellants notwithstanding the pendency of the criminal case pending on the date of superannuation, the present appeal has been filed. The learned Special Government Pleader appearing for the appellant would submit that the Order of the learned Single Judge cannot be sustained in the eye of law as the respondent was not permitted to retire, pending criminal case. The learned Counsel appearing for the respondent would submit that the encashment of Earned Leave is acquiring a property owned by a person and therefore notwithstanding the order of dismissal the same cannot be denied. Reliance has been made on the order of the learned Single Judge in T.Veera Vinodhan Vs The Registrar of Co-operative Societies, Kilpauk, Chennai, and others, reported in 2016 (1) LLJ 730 (Madras) wherein it has been held as follows:

"15. On the other hand, if an employee has chosen to accumulate his earned leave to his credit, the encashment of the same cannot be deprived on the dismissal since his Earned Leave to his credit is nothing but his property as held by the Panjab and Haryana High Court. Considering the above, we are of the view that the Order of the learned Single Judge, giving a direction to the respondents to disburse all the benefits cannot be sustained except to the extent of payment of earned leave salary alone. IN the light of the decisions supra, the encashment of Earned Leave is to be treated as a property owned by a person even one assumes a worst situation by which the employee is dismissed. In the light of the above, the Writ Appeal is partly allowed and the Order and direction issued in the Writ Petition in so far as it relates to the disbursement of withheld provident fund, earned leave encashment, extraordinary leave on personal affairs, is confirmed and the direction to disburse the gratuity is set aside. The disbursement shall be effected within a period of 8 weeks from the date of receipt of a copy of this Order. No costs. Consequently, the connected Miscellaneous Petition is closed."



5. It is pertinent to refer that a similar issue involved in W.P.No.2090 of 2020, this court vide its order dated 30.01.2020 has held as under:-

" 5.The issue that has been raised in the present writ petition is squarely covered by the judgment of this Court in the case of Secretary to Government, Revenue Department, Secretariat, Chennai and others vs. K.Palaniyandi reported in 2019 (5) CTC 19. In this judgment, the Division Bench has considered all the earlier judgments on the issue and held that, even in a case where the Government servant has been dismissed, he will be entitled for the earned leave and unearned leave encashments and also for the gratuity and Provident fund contributions. This Court held that these amounts are to be treated as a property owned by a person and therefore, even in the extreme case of dismissal from service, the employee will be entitled for these amounts. In the present case, even though, the petitioner is dismissed from service by the proceedings of the 1st respondent dated 03.09.2019, the petitioner will be entitled for earned leave and unearned leave encashments and also for the gratuity and Provident Fund. The same has to be settled by the respondents.

6.In view of the above discussion, there shall be a direction to the 2nd respondent to settle the earned leave and unearned leave encashments, Special GPF and Gratuity to the petitioner within a period of six weeks from the date of receipt of copy of this order. The petitioner is directed to make a fresh representation to the 2nd respondent along with a copy of this order."

6. Since the above observation is squarely applicable to the facts of the case, this Writ Petition can be disposed of in similar lines, except for the grant of



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gratuity and the computation of pension. In view of the above-mentioned reasons, there cannot be any impediment for respondents 2 and 3 to settle the other benefits to the petitioner.

7. With regard to the second limb of the prayer, Mr.S.Rajesh learned Government Advocate for the respondents submitted that the petitioner's request to change headquarters has already been considered and orders have been passed and hence no order is required on this.

8. As a result, this Writ Petition is **disposed** and the respondents are directed to sanction and disburse the above-mentioned eligible retirement benefits in terms of the above judicial pronouncement and pass orders within a period of four weeks from the date of receipt of a copy of this order. No costs.

13.02.2024

Internet : Yes/No
Speaking/Non- Speaking
Neutral: Yes/No
jrs



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To

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(Head of the Forest Department),
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R.N.MANJULA, J.
jrs

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