IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.10.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.30052 of 2024

and WMP No.32751 of 2024

P.Kala Ponnusamy
..Petitioner

Vs.

1. Government of Tamil Nadu,
   Rep. By the Principal Secretary to Government,
   Health and Family Welfare Department,
   Secretariat, Chennai 600 009.

2. The Director of Family Welfare,
   Chennai 600 006.

3. The Deputy Director of Medical and Rural Health Secretary,
   Salem – 636 001. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent relating to letter No.43358/K1/2021-3 dated 27.07.2022 quash the same and to issue consequential direction to the respondent to draw and disburse forthwith (1) Encashment of Leave benefits (2) GPF (3)Special PF (4)

Subsistence Allowance arrears from 01.10.2020 to 15.03.2021 and 18% interest from the date of petitioner leave due and till date of payment.

For Petitioner : M/s.T.Dharani

For Respondents : Mr.M.Bindran
Additional Government Pleader
for R1 to R3

ORDER

This writ petition has been filed challenging the impugned proceedings of the 1st respondent relating to letter No.43358/K1/2021-3 dated 27.07.2022.

2. When the matter was taken up for hearing on 15.10.2024, this Court passed the following order :-

> ***Mr.M.Bindran, learned Additional Government Pleader takes notice on behalf of respondents.***
>
> ***2.The petitioner in this case is seeking for the benefit of encashment of earned leave, GPF, Special provident Fund and subsistence allowance. The same was rejected by the 1st respondent through letter dated 27.07.2022. The claim that has***

been made by the petitioner is squarely covered by the earlier judgment of the Division Bench in Secretary to Government, Revenue Department, Secretariat. Chennai – 600 009 vs. K.Palaniyandi reported in 2019 5 CTC 19. This judgment was also subsequently followed in several orders. Therefore, the impugned communication of the 1st respondent may not be sustainable.

3.The learned Additional Government Pleader seeks time to take instructions in this regard.

4.Post this case at the end of the motion list of 19.10.2024.

3. This writ petition is taken up for hearing today. The learned Additional Government Pleader appearing on behalf of respondents submitted that by virtue of GO Ms.No.100 dated 07.09.2022, since the petitioner has been dismissed from service, the petitioner is not entitled for salary benefits of earned leave and unearned leave on private affairs. The written instructions received from the Director of Family Welfare (FAC) was also placed before this Court.

4. In the case in hand, the petitioner was working in the District Family Welfare Bureau, Salem. An FIR came to be registered in Crime No.10 of 2011 and the petitioner was arrested and remanded to judicial custody. The petitioner was placed under suspension through proceedings dated 01.08.2011.

5. The petitioner was attaining the age of superannuation on 28.02.2015. However, the petitioner was not permitted to retire from service by virtue of proceedings of the 2nd respondent dated 19.02.2015. This is in view of the fact the criminal case was pending against the petitioner.

6. The petitioner underwent trial in the criminal case in CC No.99 of 2014 and by a judgement dated 07.10.2020, the Special Court at Salem convicted and sentenced the petitioner. Aggrieved by the same, the petitioner filed Crl A No.467 of 2020 before this Court and the same is pending. Pending the appeal, the sentence imposed against the petitioner has been suspended.

7. The 2nd respondent based on the judgement of the Trial Court proceeded to issue a show cause notice dated 18.12.2020, and asked the

petitioner to show cause as to why he should not be dismissed from service. The petitioner submitted his reply stating that he has already filed an appeal and the same is pending before this Court. However, the 2nd respondent through proceedings dated 07.03.2021 imposed a major penalty of dismissing the petitioner from service.

8. The petitioner thereafter made a representation on 07.07.2021 to disburse the claim made under encashment of leave benefits, general provident fund, Special provident Fund and subsistence allowance arrears. Since the same was not paid, the petitioner filed WP No.23992 of 2021 before this Court. This Court disposed of the writ petition by an order dated 02.03.2022 and directed the 1st respondent to consider the same.

9. The 1st respondent through the impugned proceedings dated 27.07.2022 informed the petitioner that he is not eligible for encashment of earned leave and unearned leave on private affairs, since the petitioner has been dismissed from service and therefore, it entails in forfeiture of his past service. Aggrieved by the same, the present writ petition has been filed before this Court.

10. The issue involved in the present writ petition is squarely covered by the earlier judgement of this Court. Useful reference can be made to the latest one in WA No.579 of 2020 dated 06.02.2023. The relevant portions are extracted hereunder :-

6. We have gone through the judgment of the Division Bench in The Chief Secretary to Government v. M.Uthiraswamy, (Writ Appeal No.4018 of 2019) dated 22.11.2019, the Division Bench had referred to Rule 56(1) of the Fundamental Rules, Rule 21 of the Tamil Nadu Pension Rules, 1978 and Rule 7(1) of Annexure III of Tamil Nadu Leave Rules. After elaborate consideration of the impact of the relevant Rules as well as the judgment of another Division Bench of this Court in WA No.1285 of 2019., the Division Bench has concluded that even under Rule 69 or under any of the above Rules, the Government has no power to retain the monies particularly the Earned Leave Encashment, the General Provident Fund and the Family Benefit Fund, even in cases where the employee is not allowed to retire due to pendency of the criminal proceedings.

7. Useful reference can be made to the judgment of the

Division Bench in State of Tamil Nadu, Rep. by its Secretary to Government, Public Works Department, Secretariat, Fort St. George, Chennai and others v. V.Mahalingam, (WA No.1285 of 2019), wherein the another Division Bench of this Court had considered the question as to whether encashment of Earned Leave can be given to a Government servant who is facing the criminal charges. On interpretation of Rule 21 of the Tamil Nadu Pension Rules and Rule 56(1) of the Fundamental Rules, the Division Bench in its judgment had held as follows:

"7. Rule 21 of the Tamil Nadu Pension Rules, 1978, is extracted below:-

"21. Forfeiture of service on dismissal or removal:- Dismissal or removal of Government Servant from a service or post entails forfeiture of his past service."

The Learned Special Government Pleader submits that the forfeiture of past service of a Government Servant on his dismissal or removal from a post entails that no benefits arising out of service could be claimed by him. It must be remembered that the aforesaid rule has to be read in the context of the Tamil Nadu Pension Rules, 1978, where it is found, and cannot be extended beyond its scope. Viewed in that perspective, what has been meant to be conveyed by 'forfeiture' in the said rule is that a Government Servant, who has been dismissed or removed from *service, would not be entitled to claim pension relying on his past service. As such, it would be far fetched to read that provision as if all other monetary benefits that have already accrued to him during service would also be lost or deprived.*

8. Next, Rule 69 of the Tamil Nadu Pension Rules, 1978, relates to payment of provisional pension when disciplinary proceedings are pending and there is nothing mentioned anywhere in that rule about earned leave and as such, the same does not have any relevance to the issue now under consideration.

9. It is apparent on a reading of Rule 56(1)(c) of the Fundamental Rules that it empowers to continue in service, a Government Servant, who has attained the age of superannuation, till the completion of disciplinary proceedings or criminal prosecution, so that depending on its outcome, a decision regarding imposing any penalty on such delinquent Government Servant could be taken, but there is nothing therein to infer that earned leave of the said Government Servant could be withheld during that period."

8. The Division Bench has also referred to the judgment of the Supreme Court in State of Jharkhand and others V. Jitendra Kumar Srivastava and another, reported in (2013) 12 SCC 210,

wherein the Hon'ble Supreme Court has pointed out that a right under Article 300 A of the Constitution of India, cannot be taken away by executive instructions. The only contention that remains to be considered is the contention of the learned Government Pleader based on Rule 69(1)(b) of the Tamil Nadu Pension Rules. Rule 69(1)(b) of the Tamil Nadu Pension Rules, reads as follows:

"69. Provisional pension where department or judicial proceeding may be pending:

(b) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided that no such gratuity, shall be withheld in respect of a Government servant who has been permitted to retire without prejudice to the departmental or judicial proceedings pending against him, where such departmental or judicial proceedings are only for administrative lapses not involving any pecuniary loss to the Government;

Provided further that where a Government servant, against whom a departmental or judicial proceedings involving pecuniary loss to Government is pending is permitted to retire without prejudice to such departmental or judicial proceedings, a portion of gratuity may be authorized after deducting the

maximum computed financial loss to the Government for which the Government servant is held liable, along with un-recovered Government dues if any, of such Government servants, with interest."

9. A very reading of the Rule would show that it is only the gratuity that could be retained by the Government till the conclusion of the Departmental or Judicial proceedings. Therefore, at no stretch of imagination can it be said that the Government has a power to retain the Earned Leave Encashment, the General Provident Fund and the Family Benefit Fund. Though the respondent has couched his prayer in the Writ Petition in very wide terms, the Writ Court had taken care to confine it only to the Earned Leave Encashment, the General Provident Fund and the Family Benefit Fund.

11. Even in the above case, the Division Bench considered the contention that where a Government servant is dismissed or removed from service, it results in forfeiture of the past service. This contention was considered in the context of the Tamil Nadu Pension Rules, 1978. It was held that it is too far fetched to read that provision as if all the other monetary benefits that have

already accrued to the delinquent employee during service would be lost or deprived. It was held that the amount that is payable to the delinquent under the Heads of Encashment of leave, General provident fund, Special provident fund etc., are considered to be the property of the delinquent employee under Article 300A of the Constitution of India and the same cannot be taken away by executive instructions.

12. In the instant case, the appeal filed by the petitioner is pending and it is trite law that appeal is only a continuation of the original proceedings. Therefore, it must be construed that the criminal proceedings are pending and therefore, the rights of the petitioner to receive these benefits cannot be taken away by means of GO Ms.No.100 dated 07.09.2022. Unfortunately, when this Government Order was passed, none of the judgements of this Court was taken into consideration.

13. In the light of the above discussion, the impunged proceedings of the 1st respondent No.43358/K1/2021-3 dated 27.07.2022 is hereby quashed. There shall be a direction to the respondents to draw and disburse the amounts

payable towards encashment of earned leave benefits and Special Provident Fund, if any. Insofar as the subsistence allowance arrears and General Provident Fund is concerned, a specific stand has been taken by the respondents to the effect that the same has been paid to the petitioner till the date of dismissal from service. The amount as directed by this Court shall be settled in favour of the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

14. This writ petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

28.10.2024

Internet : Yes/No
Index : Yes/No
Speaking Order / Non Speaking Order
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To
1. Government of Tamil Nadu,
Rep. By the Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai 600 009.

2. The Director of Family Welfare,

Chennai 600 006.

3. The Deputy Director of Medical and Rural Health Secretary,
   Salem – 636 001.

N. ANAND VENKATESH, J.

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