



W.P.(MD)No.8943 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

**W.P.(MD)No.8943 of 2024**

M.Pandi

... Petitioner

Vs.

1.The Director of Municipal Administration,  
No.3 MRC Nagar,  
Raja Annamalaipuram,  
Chennai-600 028.

2.The Commissioner of Municipality,  
Rameshwaram,  
Ramanathapuram District.

3.The Commissioner of Municipality,  
Paramakudi,  
Paramakudi Post,  
Ramanathapuram District.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing respondent Nos.1 and 2 to take appropriate action on the petitioner's representation dated 01.03.2024 for payment of provisional pension with effect from 01.06.2022 and encashment of earned leave salary in the petitioner's leave account and special provident fund in pursuance to the proceedings of the first respondent in Na.Ka.No.



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13708/J2/2022 dated 08.02.2023 cancelling the charges and permitting the petitioner to retire from service on 31.05.2022 and consequential proceedings of the third respondent in Na.Ka.No.1245/2020/A1 dated 28.02.2023, within the period stipulated by this Court.

For Petitioner : Mr.K.Ponnaiah

For R-1 to R-3 : Mr.M.Lingadurai,  
Special Government Pleader

### **ORDER**

By consent of both the parties, this Writ Petition is taken up for final disposal at the admission stage itself.

2. Mr.M.Lingadurai, learned Special Government Pleader takes notice for respondent Nos.1 to 3.

3. This Writ Petition has been filed seeking for a direction to respondent Nos.1 and 2 to take appropriate action on the petitioner's representation, dated 01.03.2024 for payment of provisional pension with effect from 01.06.2022 and encashment of Earned Leave Salary in the petitioner's leave account and Special Provident Fund pursuant to the proceedings of the first respondent in Na.Ka.No.13708/J2/2022, dated 08.02.2023 cancelling the charges and permitting the petitioner to retire from service on 31.05.2022 and



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consequential proceedings of the third respondent in Na.Ka.No.1245/2020/A1

dated 28.02.2023.

4. The petitioner was allowed to retire without prejudice to the pending enquiry in DV & AC. The petitioner has already filed a Writ Petition in W.P.(MD).No.15410 of 2023 before this Court seeking for disbursement of pensionary benefits without prejudice to the pending enquiry in DV & AC and in the said Writ Petition, the following order has been passed:

*“2. A perusal of the typed-set of papers indicates that the petitioner was issued with a charge memo on 19.05.2022. The authorities by an order, dated 08.02.2023 have recalled the charges and permitted the petitioner to retire from service with effect from 31.05.2022 on a condition that he would be subjected to DV & AC proceedings. A perusal of the order, dated 08.02.2023 further reveals that till DV & AC proceedings and audit objections are cleared, no terminal benefits would be admissible to the writ petitioner. Without challenging the said order, the present writ petition has been filed seeking a direction to the authorities to release the terminal benefits. Therefore, the writ petition is not*



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*maintainable and the same is dismissed with liberty to the writ petitioner to challenge the order, dated 08.02.2023, if he is so advised.*

5. The learned Special Government Pleader appearing for the respondents would submit that the petitioner has raised the very same issue in this Writ Petition, even though he has not chosen to challenge the proceedings of the DV & AC, dated 08.02.2023.

6. Now, the learned counsel appearing for the petitioner would submit that in the earlier petition, he has raised the prayer as to the settlement of the pensionary benefits, but, in this Writ Petition, he has sought the prayer to sanction pensionary benefits with effect from 01.06.2022 and encashment of Leave Salary in the petitioner's leave account and Special Provident Fund in pursuant to the order dated 08.02.2023.

7. The petitioner was allowed to retire on 31.05.2022. The petitioner has not given any of the retiral benefits including provisional pension. It is seen that the petitioner was allowed to retire on 31.05.2022 and he has not been given with any retiral benefits including the provisional pension. He was



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placed under suspension and is being paid the subsistence allowance without prejudice to the pending DVAC enquiry. In these circumstances, if the petitioner is denied of his provisional pension after allowing him to retire on condition, it would amount to denying him his right to life. Though the petitioner has not chosen to challenge the order dated 08.02.2023, it would not preclude him from getting the provisional pension. At any stretch of imagination even if the petitioner might invite any disciplinary proceedings depending on the result of the pending DV & AC enquiry and he might suffer a capital punishment of removal at its conclusion, still he is eligible to get his leave encashment benefits. Because the leave encashment is a saving of a Government servant and hence, it has to be considered as his property. So, irrespective of the pending audit objection and the pending DV & AC enquiry, the petitioner is entitled to get provisional pension along with the return of Special Provident Fund towards which he paid, till his retirement

8. In view of the aforesaid reasons, the Writ Petition is allowed and the respondent Nos.1 and 2 are directed to consider the representation of the petitioner dated 01.03.2024 positively in the line of the above observations and disburse the provisional pension with effect from 01.06.2022 and Leave Encashment Salary along with the Special Provident Fund in his credit and pass



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appropriate orders to this effect within a period of eight (8) weeks from the date

of receipt of a copy of this order. No costs.

**10.04.2024**

NCC:yes/no  
Index:yes/no  
Internet:yes/no  
TSG

To

- 1.The Director of Municipal Administration,  
No.3 MRC Nagar,  
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- 2.The Commissioner of Municipality,  
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**R.N.MANJULA, J.**

TSG

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