



*W.P.No.28720 of 2017*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 02.12.2025

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THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

**W.P.No.28720 of 2017**

**and**

**W.M.P.No.30901 of 2017**

S.Elangovan  
Chief Inspector of Factories  
No.13, 7<sup>th</sup> Cross Street  
Senthil Nagar, Kolathur  
Chennai-600 099.

... Petitioner

vs.

The Principal Secretary to Government,  
Labour Employment Department,  
Secretariat, Fort St.George,  
Chennai – 600 009.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India  
seeking a Writ of Certiorarified Mandamus, calling for the records in respect  
of order No.G.O.(2D) No.1 dated 30.01.2009 issued by the respondent and

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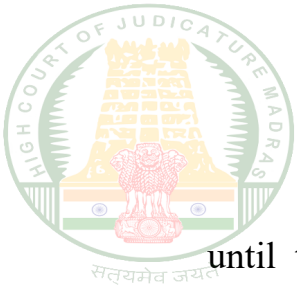
to quash the same insofar as it seeks to deprive the petitioner of his right to have his leave encashment amount and the Special Provident Fund amount paid to him and consequently, direct the respondent to forthwith sanction and disburse the encashment amount of the petitioner's earned leave standing in his leave credit and the Special Provident Fund amount to the petitioner within such time.

For Petitioner : Ms.H.Kavitha  
for Mr.S.N.Arunkumar  
For Respondent : Mrs.R.L.Karthika  
Government Advocate

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### **ORDER**

The captioned writ petition has been filed seeking the issuance of a writ of certiorarified mandamus assailing the order dated 30.01.2009 bearing G.O. (2D) No. 1, Labour and Employment (E1) Department, passed by the respondent. By the said order, the petitioner was placed under suspension pending enquiry, and he was not permitted to retire on attaining the age of superannuation on the afternoon of 31.01.2009, but was retained in service



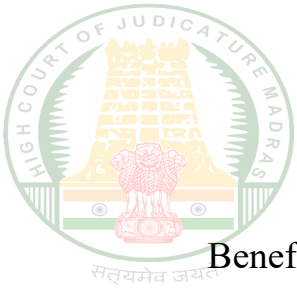
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until the enquiry into the charges was concluded and final orders were passed by the competent authority. The impugned order further states that during such extension of service, the petitioner's service rights shall stand frozen at the level reached as on the date of superannuation, i.e., 31.01.2009 (afternoon), and that his salary for the said period shall not exceed the amount of pension that would have accrued to him on that date.

2. The petitioner, while functioning as the Chief Inspector of Factories under the Department of Labour and Employment, Government of Tamil Nadu, was detained on an allegation of acceptance of bribe and was kept in judicial custody for 48 hours. Consequently, he was placed under suspension pending enquiry, and thereafter, the impugned order came to be passed.

3. The learned counsel for the petitioner submitted that, till the conclusion of the departmental enquiry, the respondent has no authority to withhold the Earned Leave Encashment, Special Provident Fund and Family



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Benefit Fund. Therefore, according to him, the impugned order restraining such payments on the ground that the petitioner's salary during the extended period shall not exceed the pension amount that would have accrued to him on the date of superannuation is not legally sustainable. In support of this submission, reliance is placed on the decision of the Hon'ble Division Bench of this Court in W.A. No. 579 of 2020.

4. Per contra, the learned State Counsel submitted that, pending enquiry, the petitioner is not entitled to the benefits claimed, in view of G.O.Ms. No. 47, Human Resources Management (FR-III) Department, dated 29.08.2025, which amended Rule 56 of the Fundamental Rules. It is, therefore, contended that the impugned order passed by the respondent does not suffer from any illegality or infirmity and does not warrant interference.

5. The arguments of the learned counsel for the parties and the materials placed on record have been duly considered.



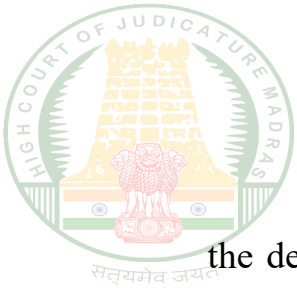
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6. With regard to the departmental enquiry initiated against the petitioner, it is submitted that this Court has stayed the further proceedings.

The petitioner has been denied Earned Leave Encashment and Special Provident Fund on account of the pendency of the enquiry.

7. The issue as to whether a Government servant can be denied Earned Leave Encashment and Special Provident Fund pending enquiry was considered by the Hon'ble Division Bench of this Court in the aforesaid case. The Hon'ble Division Bench, referring to Rule 69 of the Pension Rules, which deals with provisional pension where departmental or judicial proceedings are pending, has held that only gratuity can be retained by the Government till the conclusion of such proceedings. Therefore, by no stretch of imagination can it be said that the Government has the power to retain the Earned Leave Encashment, the General Provident Fund and the Family Benefit Fund. In the light of the judgment of the Hon'ble Division Bench,



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the denial of Earned Leave Encashment and Special Provident Fund is not legally sustainable.

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8. The reliance placed by the learned State Counsel on G.O.Ms. No. 47 dated 29.08.2025 is not applicable to the facts of the present case, since the said Government Order pertains to the amendment to Rule 56 of the Fundamental Rules. The amended sub-rule (1-B) of Rule 56 states that the competent authority reserves the right to withhold the contribution made by the Government towards the pension account of a Government servant appointed on or after 01.04.2003, either in full or in part, and to order recovery of the whole or part of any pecuniary loss caused to the Government, if such Government servant is found guilty in departmental or judicial proceedings of grave misconduct or of having caused pecuniary loss by misconduct or negligence during service. In the instant case, the petitioner was appointed prior to 01.04.2003, and as on date, the petitioner has not been found guilty of causing any pecuniary loss to the Government.

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Therefore, the reliance placed on the said Government Order is misplaced.

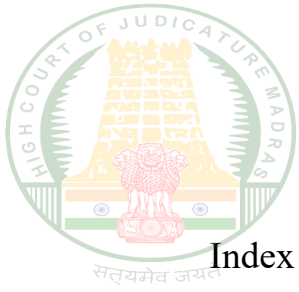
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In any event, the amendment to Rule 56 came into force subsequent to the superannuation of the petitioner and cannot be applied retrospectively to his case.

9. Accordingly, the captioned writ petition is allowed, and the impugned order dated 30.01.2009 bearing G.O.(2D) No.1, Labour and Employment (E1) Department, is hereby set aside. The respondent is directed to disburse the Earned Leave Encashment and Special Provident Fund to the petitioner, with interest at the rate of 6% per annum from the date on which the amounts fell due till the date of actual payment. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes / No

Neutral Citation : Yes / No

Speaking / Non-speaking

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To

The Principal Secretary to Government,  
Labour Employment Department,  
Secretariat, Fort St.George,  
Chennai – 600 009.



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