

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD
W.A.No.2767 of 2018
and C.M.P.No.22842 of 2018

The Superintending Engineer,
Tamil Nadu Generation and Electricity
Distribution Corporation Limited,
Tamil Nadu Electricity Board,
Chennai Electricity Distribution Circle/South-II,
K.K.Nagar, Chennai. ... Appellant

Vs.

T.Datchinamurthy ... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order of this Court, dated 23.03.2018, made in W.P.No.6807 of 2018.

Prayer in W.P.No.6807 of 2018:

Petition filed under Article 226 of the Constitution of India this Hon'ble Court issue a Writ of Mandamus, directing the Respondent to disburse the Petitioner's retirement benefits like Encashment of Earned Leave and Encashment of Unearned Leave on Private Affairs to the Petitioner.

For Appellant : Mr.P.R.Dhilipkumar

For Respondent : Mr.C.Prakasam

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J U D G E M E N T

(Judgement of the Court was made by S.MANIKUMAR, J.)

While in service, on 14.03.2009, respondent, a Junior Engineer Grade-I, Perungudi / North, Tamil Nadu Generation and Electricity Distribution Corporation Limited, has been arrested by the Vigilance and Anti Corruption police and he was suspended from service on 20.03.2009. Departmental proceedings were initiated against him. Despite the same, a criminal case was also registered.

2. Respondent attained the age of superannuation on 30.06.2015 and on account of the above departmental proceedings, he was not allowed to retire from service.

Respondent filed W.P.No.6807 of 2018, for a Mandamus against the appellant to disburse the retirement benefits like encashment of earned leave and encashment of unearned leave on private affairs by placing reliance on a decision of this Court made in W.A.No.207 of 2016, dated 26.02.2016, which has been subsequently followed by this Court in W.P.No.29950 of 2017, dated 22.11.2017, wherein, this Court observed that a Government servant, facing departmental as well as criminal proceedings, is entitled to get part of his retirement benefits, namely, his contribution towards general provident fund, special provident fund, encashment of earned leave and encashment of unearned leave on private affairs.

3. Writ Court vide impugned order dated 23.03.2018, made in W.P.No.6807 of 2018, directed the appellant herein, to consider the representation of the respondent dated 20.09.2017, on merits and in accordance with law.

4. Being aggrieved by the said order, instant writ appeal has been filed.

5. In the grounds of appeal, reference has been made to Rules 12(1), 21 and 22 of the Tamil Nadu Pension Rules, 1978, applicable to Tamil Nadu Generation and Electricity Distribution Corporation Limited also.

6. Mr.C.Prakasam, learned counsel appearing for the respondent, submitted that order made in W.A.No.207 of 2016, dated 26.02.2016, is squarely applicable to the facts of this instant writ appeal. He further submitted that the said order was challenged before the Hon'ble Supreme Court, by way of Special Leave Petition and that the same was also rejected.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. The judgement passed in W.A.No.207 of 2016, dated 26.02.2016, is extracted hereunder:

"The instant intra-court appeal arises from the order dated 2nd June, 2015 made in W.P.No.15457 of 2015.

2. The writ petitioner, who is the respondent herein, filed the writ petition, seeking direction to the appellants herein to disburse his retirement benefits, such as gratuity, special provident fund, encashment of earned leave and unearned leave on private affairs.

3. The respondent herein working as Electrician in the Electricity Board was to retire on attaining the age of superannuation on 30th June, 2013. However,

he was not permitted to do so on account of pendency of the criminal case under the provisions of the Prevention of Corruption Act, 1988.

4. The learned Single Judge, considering all aspects of the matter, held that the petitioner was having earned leave and unearned leave on private affairs before initiation of the case and as such, he is entitled to encashment of earned leave and unearned leave on private affairs. The claim of gratuity was given up by the employee / writ petitioner on the ground that in the event of conviction and dismissal of service, the writ petitioner may not be entitled to get gratuity. The special provident fund was also not granted as the writ petitioner failed to establish any contribution made by him. While disposing of the writ petition, a direction was made to the appellants herein to disburse encashment of earned leave and encashment of unearned leave on private affairs. In respect of special provident fund, it was held that if any contribution was made by the writ petitioner, the same can be paid to the petitioner.

5. We do not find any error, illegality or infirmity in the order sought to be impugned in this writ appeal preferred by the Tamil Nadu Generation and Electricity Distribution Corporation Ltd., warranting interference. Thus, the writ appeal stands dismissed. No costs. Consequently connected miscellaneous petition stands closed."

9. Learned counsel for the respondent further submitted that the appellant was only directed by the Writ Court to consider the above said decisions and pass appropriate orders on the representation of the respondent herein, dated 20.09.2017, on merits and in accordance with law.

10. Taking note of the submissions of the learned counsel appearing for the respondent, we are not inclined to interfere with the order of the Writ Court. We dismiss the writ appeal. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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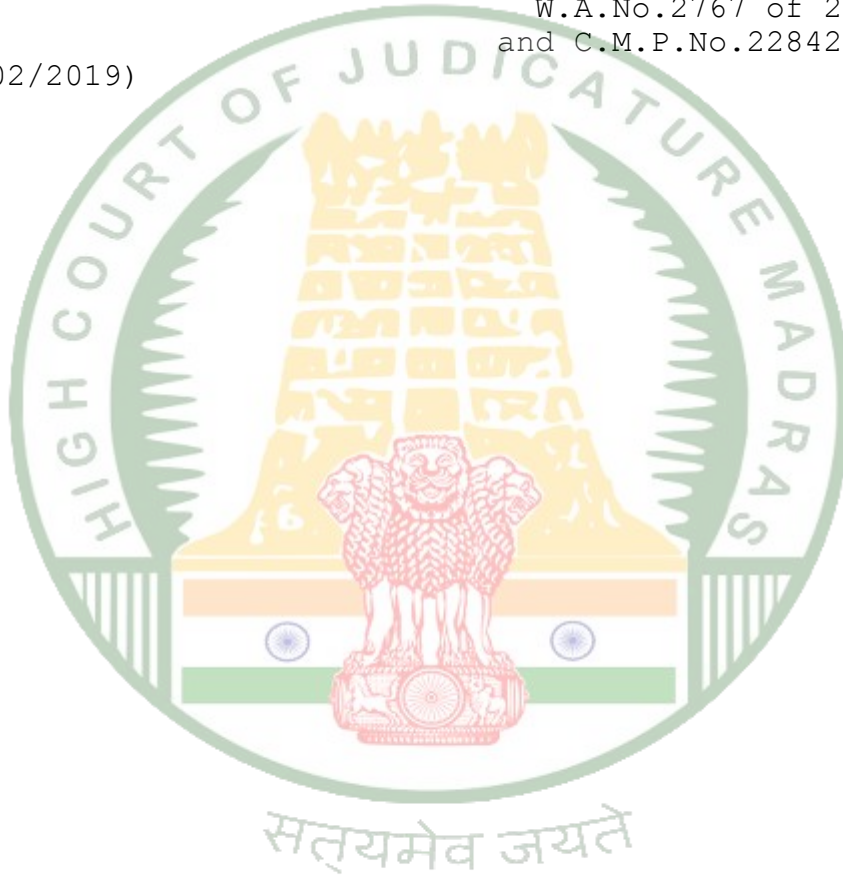
The Superintending Engineer,
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Tamil Nadu Electricity Board,
Chennai Electricity Distribution Circle/South-II,
K.K.Nagar, Chennai.

+1cc to Mr.P.R.Dhilipkumar, Advocate SR.No. 87257

+1cc to Mr. C.Prakasam, Advocate SR.No. 87770

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A.SK(11/02/2019)



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