

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.04.2019
CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM
W.P.No.7417 of 2018

S.Balu

...Petitioner

Vs

1. The Director cum Commissioner,
Directorate of Municipalities,
Ezhilagam, Addl.Building,
6th floor, Chepauk, Chennai 600 005.
2. The Regional Director of Municipalities,
No.1, Jeeva Commercial Complex,
2nd floor, West Tambaram,
Chennai 600 045.
3. The Chidambaram Municipality,
Rep by its Commissioner,
Kutchery Street, Chidambaram 608 001.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Mandamus, directing the respondents in particular third respondent to fix the subsistence allowance at the rate of 75% of the petitioner's salary with effect from 09.09.2013 and pay the difference amount in between 75% and 50% and also fix the provisional pension with effect of the petitioner's date of retirement i.e., 28.02.2017 and continue to pay the provisional pension till the final decision taken by the respondents proceedings on petitioner's department.

For Petitioner : Mr.V.R.Venkatesan

For Respondents : Mr.R.S.Selvam,

Govt. Advocate for R1 & R2

Mr.P.Srinivas for R3

O R D E R

The departmental disciplinary proceedings initiated against the writ petitioner for the misappropriation of the funds of the municipality to the tune of Rs.1.22 crores is pending. The investigations against the writ petitioner regarding such a huge amount of misappropriation is in progress. The present writ petition is filed for a direction to direct the 3rd respondent

to fix the subsistence allowance at the rate of 75% of the writ petitioner's salary with effect from 09.09.2013.

2. The fact remains that, the writ petitioner attained the age of superannuation and not allowed to retire from service on 28.12.2017. If the services of the employees are retained beyond the date of superannuation, they are entitled for the subsistence allowance, not exceeding the provisional pension. This being the Rules to be followed, the writ petitioner would be eligible to get the subsistence allowance at the rate which is not exceeding the provisional pension. Under these circumstances, the writ petitioner cannot claim 75% of subsistence allowance. Even in respect of in-service candidates, 50% of the pay is the subsistence allowance to be paid, which is mandatory. In respect of the payment of subsistence allowance of 75%, it is the discretion of the Competent Authority and which is to be granted only based on certain facts and circumstances and by affording reasons for the grant of enhanced superannuation. In all other circumstances, the employees are eligible to get 50% of the salary as subsistence allowance.

3. In the present case, the writ petitioner attained the age of superannuation on 28.12.2017. Thus, he is eligible to receive his subsistence allowance not exceeding the provisional pension and further, the investigations and enquiry in respect of the allegations of misappropriation of the funds of the municipality to the tune of 1.22 crores are in progress. Under these circumstances, the relief as such sought for deserves no merit consideration. Accordingly, the present writ petition stands dismissed. No Costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Pkn

To

1. The Director cum Commissioner,
Directorate of Municipalities,
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2. The Regional Director of Municipalities,
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2nd floor, West Tambaram,
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3. The Commissioner,
Chidambaram Municipality,
Kutchery Street, Chidambaram 608 001.

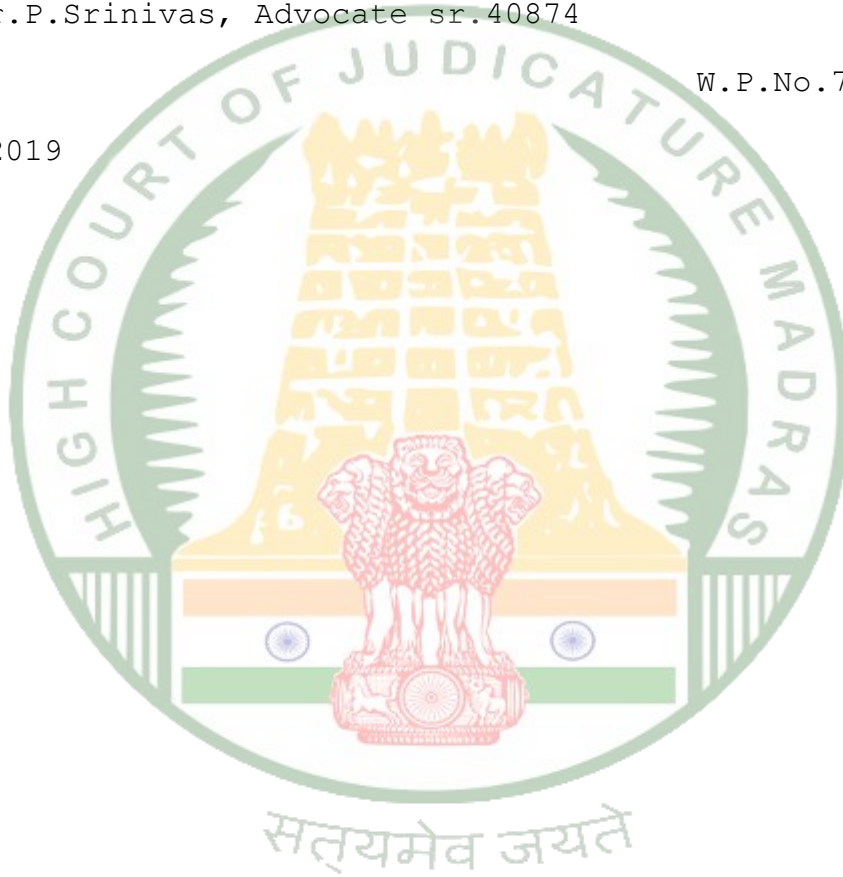
+lcc to Mr.M.Saravana Kumar, Advocate sr.41018

+lcc to Government Pleader sr.41937

+lcc to Mr.P.Srinivas, Advocate sr.40874

W.P.No.7417 of 2018

nr 01/07/2019



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