

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.38635 & 38636 of 2015

T.Paramasivam ...Petitioner in WP.No.38635/2015

R.Murugan ...Petitioner in WP.No.38636/2015

Vs.

1. The District Collector,
Namakkal District,
Namakkal. ...1st Respondent in WP.No.38635/2015
2. The Commissioner,
Mallasamuthiram Panchayat Union,
Mallasamuthiram,
Namakkal District. ...2nd respondent in W.P.Nos.38635/2015
3. The Director of Municipal Administration,
Chepauk, Chennai-5.
4. The Commissioner
Dharmapuri Municipality
Dharmapuri, Dharmapuri District ...1st & 2nd Respondent in
W.P.Nos.38636/2015

Prayer in WP.No.38635 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to disburse the Gratuity, General Provident Fund, Special Provident Fund, Encashment of Earned Leave and Encashment of Un-earned Leave on private affairs to the petitioner.

Prayer in WP.No.38636 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondent to disburse the Gratuity, Special Provident Fund, Encashment of Earned Leave and Encashment of Un-earned Leave on private affairs to the petitioner.

For Petitioners: Mr.C.Prakasam
(in both Wps)

For Respondents: Mr.S.N.Parthasarathy
Government Advocate for R1
(in both Wps)
Mr.M.Perumal for R2
(in WP.No.38635 of 2015)
Ms.A.Srijayanthi for R2
(in WP.No.38636 of 2015)

C O M M O N O R D E R

In both these writ petitions, the respective writ petitioner seeks for a Mandamus, directing the respondents to disburse the Gratuity, General Provident Fund, Special Provident Fund, Encashment of Earned Leave and Encashment of Un-earned Leave on private affairs.

2. Heard both sides.

3. It is seen that in both these cases, the respective writ petitioners though attained the age of superannuation, they were not allowed to retire from service, since the departmental proceedings as well as the criminal case are pending against them in respect of certain charges leveled against these petitioners. During the pendency of those proceedings, these writ petitioners seek for the payment of Gratuity, General Provident Fund, Special Provident Fund, Encashment of Earned Leave and Encashment of Un-earned Leave on private affairs.

4. It is contended by the learned counsel for the petitioners that pendency of the departmental/criminal proceedings cannot be a bar for disbursing the above monetary benefits to these petitioners.

5. In support of the above contention, the learned counsel for the petitioner, Mr.C.Prakasam, relied on a decision made in the Division Bench of this Court in W.A.No.207 of 2016 dated 26.02.2016, wherein at paragraph Nos.4 and 5, it is observed as follows:-

"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. "

The learned counsel further submitted that the said order of the Division Bench was put to challenge before the Apex Court, which in turn, dismissed the SLP on 06.07.2017. He has produced a copy of the said order as well.

6. Perusal of the said order of the Division Bench, which was not interfered by the Apex Court, would show that the petitioners are entitled to get the disbursement of encashment of earned leave, encashment of un-earned leave on private affairs and the special provident fund, if any contribution was paid by the respective petitioners towards the said fund.

7. Accordingly, the respondents are directed to consider the claim of the respective petitioners to disburse the encashment of earned leave and encashment of un-earned leave on private affairs. In respect of the special provident fund, if the petitioners have made any contribution, the same shall also be paid to them. The said exercise shall be done by the respondents within a period of eight weeks from the date of receipt of a copy of this order. With the above directions, both these writ petitions are disposed of accordingly. No costs.

सत्यमेव जयते

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

sni/vri

To

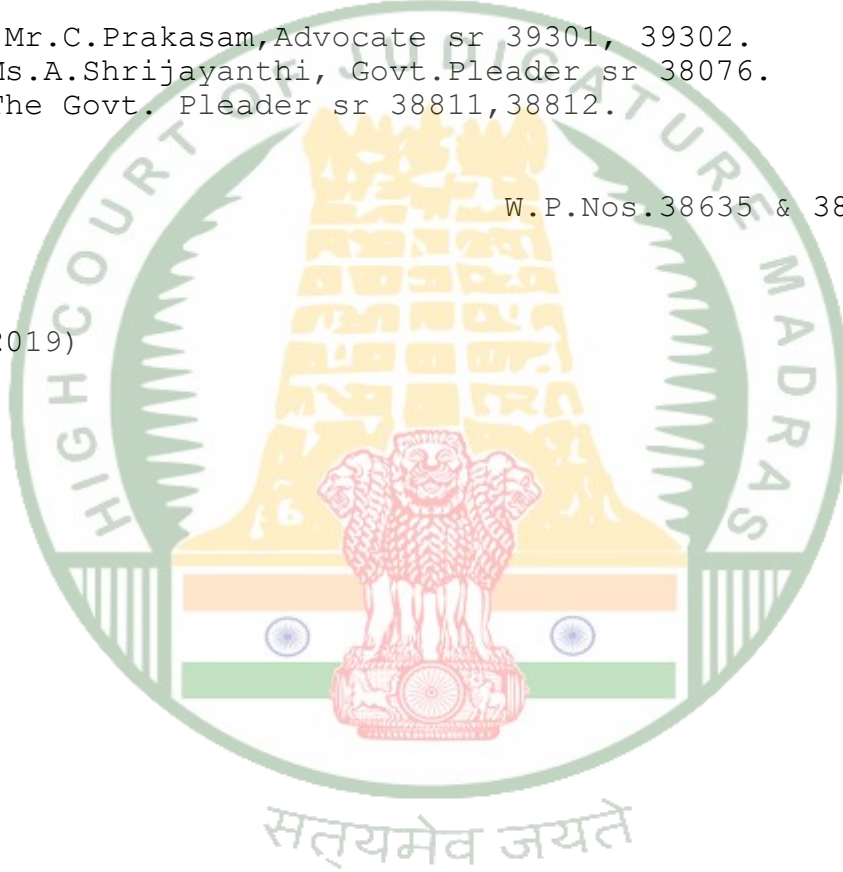
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Mallasamuthiram,
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Dharmapuri, Dharmapuri District.

+2 CCS to Mr.C.Prakasam, Advocate sr 39301, 39302.
+1 CC to Ms.A.Shrijayanthi, Govt.Pleader sr 38076.
+1 CC to The Govt. Pleader sr 38811, 38812.

W.P.Nos.38635 & 38636 of 2015

TM(CO)
SP(09/05/2019)



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