

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WP(C).No. 37950 of 2007 (P)

PETITIONER(S):

**A.V.HARINDRAN
"BHASSUREE", ANCHAMPEEDIKA P.O., VIA. MOTTAMMAL
KANNUR-670 331.**

BY ADV. SRI.B.PREMNATH (E)

RESPONDENT(S):

- 1. UNION OF INDIA AND OTHERS
REPRESENTED BY THE SECRETARY, MINISTRY OF STEEL
SHRAM SAKTHI BHAVAN, NEW DELHI.**
- 2. HINDUSTAN STEEL WORKS CONSTRUCTION LTD.
(HSCL) (A GOVT.OF INDIA UNDERTAKING), HAVING HEAD-
QUARTERS AT 5/1, COMMISSARIAT ROAD(HASTINGS)
KOLKATTA-700 022, REP.BY ITS DIRECTOR (FINANCE)
12 M.G.ROAD, PUBLIC UTILITY BUILDING, 15TH F**
- 3. HINDUSTAN STEEL WORKS CONSTRUCTION LTD.
(HSCL)(A GOVT.OF INDIA UNDERTAKING), BHILAI UNIT
REPRESENTED BY ITS GROUP GENERAL MANAGER(GGM)
NIRMAN BHAVAN, DISTRICT DURG, CHATTISGARH
PIN-490 001.**
- 4. HINDUSTAN STEEL WORKS CONSTRUCTION LTD.
(HSCL), 32/1928, SRINILAYAM
ANCHUMANA ROAD, EDAPPALLY P.O., COCHIN-24
REPRESENTED BY ITS
ASSISTANT GENERAL MANAGER.
(R4 IS DELETED AS PER
ORDER DATED 18.09.2008 IN IA.11378/2008)**

**R,R1 BY ADV. SMT.D.P.RENU,CGC,
R,R3 BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
R,R3 BY ADV. SRI.P.VISWANATHAN
R,R1 BY ADV. SHRI.M.S.SHIRAZ ABDULLA, CGC
R1 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
R BY SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1** COPY OF CIRCULAR NO. BH/PERS/C/1(80)/2K/2883 DTD. 29.5.2000
ISSUED BY THE 2ND RESPONDENT.
- EXT.P2** COPY OF THE CIRCULAR NO. PER/W&SO/517/(CDA)/150/M-164 DTD.
20.1.98 ISSUED BY THE 2ND RESPONDENT.
- EXT.P3** COPY OF PAY DETAIL OF THE DUE SALARY OF V.R. EMPLOYEES
IN THE PRE REVISED SCAL DTD. 2.9.02
- EXT.P4** COPY OF PAY SLIPS OF THE PETITIONER FROM JANUARY 1998
TO MARCH 1999.
- EXT.P5** COPY F THE COMMUNICATION OF 3RD RESPONDENT OF THE
APPROVED PAYMENT OF T.A AND TRANSPORTATION COST.
- EXT.P6** COPY OF THE PROCEEDINGS IN RAJYASABHA DTD. 28.2.2000.
- EXT.P7** COPY OF THE CIRCULAR NO. PER/RR/508/97/1252 DTD. 27.5.97.
- EXT.P8** COPY OF THE INCENTIVE SCHEME FOR ACQUIRING
PROFESSIONAL QUALIFICATION ISSUED BY THE 2ND
RESPONDENT.
- EXT.P9** A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN O.P
NO.21955/02 DTD. 27.6.06.
- EXT.P10** COPY OF THE REPRESENTATION OF THE PETITIONER DTD. 3.1.07.
- EXT.P11** COPY OF THE REPLY OF THE 2ND RESPONDENT DTD 27.4.07.
- EXT.P12** COPY OF THE REPRESENTATION OF THE PETITIONER DTD.
17.5.07.
- EXT.P13** COPY OF OFFICE ORDER NO.BH/PERS/NEX/200(i)/2000/285 DTD.
18.1.2000 ISSUED BY THE 3RD RESPONDENT.
- EXT.P14** COPY OF THE LETTER NO. FA/PF.FS/2676/01/688OF THE 2ND
RESPONDENT, DTD. 18.4.01
- EXT.P15** COPY OF THE VRS ACCEPTANCE ORDER O.
BH/PERS/NEX/V.R/03619/99/2984 DTD. 23.9.1999 ISSUED BY THE
3RD RESPONDENT.
- EXT.P16** COPY OF THE LETTER NO. PH/LB/THA/88 DTD. 27.7.88 ISSUED BY
SRI. T.H. AZAD, THEN PROJECT HEAD

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RESPONDENTS EXHIBITS:

- EXT.R3(A) COPY OF THE COVERING LETTER DTD. 27/28.11.07.
- EXT.R3(B) AUTHORISATION LETTER ISSUED BY EXECUTIVE DIRECTOR OF THE 3RD RESPONDENT COMPANY.
- EXT.R3(C) COPY OF THE LETTER NO.4(11) 94 HSM VOL-IV DTD. 14.7.99 ISSUED BY THE MINISTRY, GOVT, OF INDIA.
- EXT.R3(D) COPY OF THE COMPANY LETTER DATED 22/23-09-99.
- EXT.R3(E) COPY DATED 8.3.02 TO THE 3RD RESPONDENT FROM THE MINISTRY OF STEEL, GOVT. OF INDIA.
- EXT.R3(F) COPY OF THE ORDER DTD. 10.1.05 PASSED BY THE HON'BLE SUPREME COURT OF INDIA IN W.P.(C) NO.333 OF 2003.
- EXT.R3(G) COPY OF PHOTOSTAT COPY OF THE CIRCULAR DTD. 28.8.2000 ISSUED BY THE 3RD RESPONDENT.
- EXT.R3(H) COPY OF STATEMENT OF CALCULATIONS PERTAINING TO BACK-LOG SALARIES PAYMENT OF THE PETITIONER.
- EXT.R3(I) COPY OF THE LETTER DTD. 12.12.01 RELEASING NON-PLAN LOAN TO THE COMPANY BY THE GOVT. OF INDIA.
- EXT.R3(J) COPY OF THE ORDER OF HON'BLE HIGH COURT OF CHATTISGARH IN W.P.(C) NO. 4208 OF 2008.

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.37950 of 2007 - P

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Dated this the 26th day of October, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the petitioner had not been disbursed the amounts, which he alleges to be due to him on his being severed from his employment with the respondent Company on 09.06.2000 as per a Voluntary Retirement Scheme (V.R.S). The petitioner in the above writ petition impugned Ext.P11 order passed by the respondent Company in compliance of Ext.P9 judgment in O.P No.21955 of 2002.

2. The petitioner retired from the respondent company under a V.R.S on 09.06.2000 from Bhilai. The petitioner is said to have made a representation for the benefits due to him, which according to him were illegally withheld by the

respondent Company. However, no such representation is seen produced herein. The petitioner refers to a copy of the representation said to have been produced in the earlier writ petition dated 11.09.2000 and 24.02.2000, which were produced as Exts.P2 and P1 in O.P No.21955 of 2002. The petitioner also approached this Court with a prayer for consideration by the aforesaid original petition, which was disposed of by Ext.P9.

3. This Court directed that the petitioner would be entitled to file a supplementary representation also. At the outset, it is to be noticed that the petitioner approached this Court after two years from the date of his V.R.S and admittedly, the petitioner retired from Bhilai, which does not in fact confer any jurisdiction on this Court to exercise power under Article 226 of the Constitution of India. In any event, the respondent Company in compliance of Ext.P9 judgment, considered the request made by the petitioner as per Ext.P11, which is impugned herein.

4. Essentially, it is to be noticed that the entire claim, rests on disputed questions of facts and the computation of amounts, which the petitioner alleges is due to him and the respondent Company asserts has been paid in accordance with the rules and the scheme of retirement. It is trite that this Court exercising jurisdiction under Article 226 would not go into such disputed questions of fact. The mere fact that the writ petition was admitted in 2007 and was kept pending herein till today, cannot be a reason to exercise jurisdiction under Article 226 to go into such disputed questions of facts. A dismissal on the ground of an alternate remedy would not be proper for reason of the writ petition having been admitted and kept pending all these years. But still if disputed questions of fact are to be looked into for a proper adjudication, this Court sitting in Article 226 of the Constitution of India would be disabled from resorting to such an enquiry. The petitioner's appropriate

remedy in that context would have been a suit and the petitioner by choice did not resort to that and would have to suffer the consequences.

5. Ext.P11 order has dealt with each of the claim made by the petitioner. With respect to the back log salaries, the respondent Company has categorically stated that as per the revised pay scales, cheque No.879532 dated 15.10.2004 for an amount of Rs.8,987/- was released to the petitioner after effecting certain recoveries. It is also stated that the details of such payment and recovery were provided to the petitioner. On a re-evaluation, the computation was found to be correct and the claim raised for an amount of Rs.26,034/- was rejected. The excess deduction of interest due to the Bank loan and Central Provident Fund loan was negated on account of the fact that what ever interest was recovered from the petitioner's salary was remitted to the creditor, from which, the loan was availed, being

the Bank and the Employees Provident Fund Trust of the respondent Company respectively.

6. The arrears of pay revision, arising out of the revised pay scales for the period from 01.01.1996 to 31.12.1997, is said to be regulated by the decision of the Hon'ble Supreme Court in W.P.(C) No.333 of 2003. It is stated that as per the aforesaid decision of the Hon'ble Supreme Court, no arrears is payable to the petitioner herein.

7. As for the settling-in-allowance and transportation charges, the claim has been rejected for reason only of the actual claim for reimbursement having not been made to the respondent Company. The learned Counsel for the petitioner however would refer to Ext.P5 to contend that such a claim was raised and was also available in the representation filed by the petitioner. However, on a reading of Ext.P5, there is nothing to show that the claim as stated in Ext.P5 was in fact made to the

respondent Company and not even a date of such submission is evident from Ext.P5.

8. With respect to half pay leave salary balance payment of Contributory Provident Fund Trust and the D.A arrears, the plea taken is of financial stringency. The claim for Leave Travel Concession (LTC) has been rejected since, there was a ban by the Central Government by way of an economy measure. It is also to be noticed that the petitioner's claim is not one of reimbursement but however conversion of the LTC payable, in terms of money. The professional incentive increment and upgradation w.e.f. 07.09.1996 was declined for reason of the petitioner being a non-executive cadre employee having no professional qualification.

9. This Court does not find any reason to interfere with any of the rejections as such made as per Ext.P11, especially under Article 226, since there clearly arise disputed questions of

fact and computation on the basis of the service conditions. However with respect to the payment due which are admitted, being the balance payment of contributory provident fund and D.A arrears enhanced in respect of CDA pattern Government employees and D.A contributions as has been noticed in clause 6, 7 and 8 of Ext.P11, the same shall be computed and paid within a period of three months from the date of receipt of a certified copy of this judgment.

The writ petition would stand disposed of with the above observations. Parties are left to suffer their respective costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/27/10/2015

// true copy //

P.A to Judge.