

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2017

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.37059 of 2016

and

W.M.P.No.31859 of 2016

1.S.Viswanathan
2.V.S.Muthusamy
3.M.Selvi
4.S.K.Somasundaram
5.S.Vimala
6.E.Sathyamoorthy
7.S.Manimala
8.M.K.Vadivel
9.V.Kamatchi

... Petitioners

Vs.

1. The Director,
Handloom and Textiles,
Kuralagam, Chennai - 108.
2. The Assistant Director,
Handloom and Textiles,
No.426, Bhavani Main Road,
Erode, Erode District.
3. The President,
Sri Thirumagal Powerloom
Weavers Co-operative
Society EH-223,
No.113, Mandapam Street,
Marappalam, Erode.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondents to disburse the arrears of the cooly to the tune of Rs.40,99,650/- to the petitioners.

For Petitioner .. Mr.C.Prakasam

For Respondents .. Mr.V.Selvaraj,
Addl. Govt. Pleader for R1 & R2
Mr.K.Kumaresh Babu for R3

ORDER

This is the second round of litigation though the petitioners were not parties in the earlier round. The petitioners are weavers and they are the erstwhile members of the third respondent. It appears that their dues have not been paid. One of the erstwhile members similarly placed like that of the petitioners approached this Court and obtained an order in W.P.No.13609 of 2016 dated 28.04.2016 which reads as follows:

4 On the last occasion, when the case came up for hearing on 11.04.2016, this Court, pointed out that the instructions given by the respondents reveals a sorry state-of-affairs in the matter of disbursal of the funds by the Government to the weavers, who have manufactured dhotis and sarees mentioned for free distribution. The payment for the supplies which were effected upto the year 2014, were not settled, but the supplies effected by the new members, who were elected to the 3rd respondent / Society during the year 2014, appears to have been hurriedly made. Therefore, the respondents were directed to explain their conduct as to why they should not be directed to effect payment to the suppliers who have made supplies prior and upto the year 2014. From the counter affidavit, filed by the 3rd respondent / Society, it is seen that the petitioner and few other members are no longer the members of the 3rd respondent / Society ; but they have started a new Society and this appears to have been the reason to drag them and to deny their actual dues. A feign plea was raised by the learned Special Government Pleader by stating that a writ of mandamus cannot be issued when there is a disputed question of fact, especially, when it is a money claim. This submission deserves to be rejected in the light of the fact that in paragraph 12 of the counter, it has been admitted that a sum of Rs.44.53 lakhs are due and liable to be paid to the members of the 3rd respondent / Society. Therefore, the conduct of the respondents have to be tested on their own admission. The justification given for disbursing the wages to the newly inducted members during 2015-16, is not convincing.

5 As observed earlier, the only reason for refusing to settle the petitioner and other members, is on account of the fact that they are a breakaway group and they have organised themselves into a new Society. This can hardly be a reason to deny the lawful dues. Ultimately, the learned Special Government Pleader [Co.op], on instructions from the respondents, submitted that they will settle the petitioner's due, which is Rs.3,53,540/-. However, it has to be pointed out that the prayer in the writ petition is not only to settle the petitioner but also the old members of the Society, to the total tune of Rs.44.53 lakhs. The learned Special Government Pleader [Co.op] states that it is not a Public Interest Litigation. This submission is also devoid of merits, in the light of the fact that already the old members of the Society have been dealt with arbitrarily and now the respondents want each of them to approach this Court and file separate writ petitions. This hyper-technical plea raised by the respondents stands rejected.

6 In the light of the same, there will be a direction to the 3rd respondent / Society to settle a sum of Rs.3,53,540/- payable to the petitioner on or before 13.05.2016 and in respect of the remaining nine members, the entire dues shall be settled on or before 30.06.2016.

2.As the aforesaid order includes the petitioners' case as well, it was duly modified in W.A.No.638 of 2016 dated 19.05.2016 in the following manner:

"7.Considering the above submissions, this Court directs the appellant-Society to pay a sum of Rs.3,53,540/- to the first respondent herein/writ petitioner on or before 18.06.2016 and with regard to the arrears in respect of the remaining nine numbers of the appellant Society within two weeks from the date of receipt of the order and on such receipt, the appellant-Society shall consider the same and disburse the due amount to the members of the appellant-Society within period of eight weeks from the date of receipt of a copy of this order, if their claim is genuine."

Despite the same, no amount has been paid to the petitioners and therefore, the present writ petition has been filed.

3.Learned counsel appearing for the petitioners would submit that they are similarly placed as that of the petitioners in the earlier round of litigation. Reliance has been made on the counter affidavit filed by the third respondent coupled with the audit report dated 31.03.2015.

4.Learned counsel appearing for the third respondent has made two submissions. The first is with respect to the non-compliance of the direction sought for pursuant to the order passed by the Division Bench and the second one being the adequate amount sought for is not released by the second respondent despite the communication dated 14.11.2016.

5.The conduct of the third respondent has been dealt with by this Court on the earlier occasion. The liability to pay the amount quantified is not in dispute. The records sought for from the petitioners are available with the third respondent itself. The petitioners are poor weavers and they are no longer members of the third respondent. As observed earlier, the present members have been taken care of. The records also would reveal that some amount has also been released by the Government. The audit report which can be classified as a piece of evidence is not in dispute. It is to be seen that the amounts due to the petitioners in W.P.No.13609 of 2016 has also been indicated in the audit report along with the petitioners herein. Therefore, the petitioners do stand on the same footing as that of the petitioners in the earlier writ petition. The particulars sought for has to be seen in the context of the audit report. It appears that the main problem of the third respondent is its inability to pay the amount and that is the reason why he has sought for the amount from the second respondent. Be that as it may, the third respondent cannot deny the amount to the petitioners on a technical ground, especially, when the nature of work of the petitioner is not disputed.

6.In such view of the matter, the following order is passed:

The second respondent is directed to take appropriate steps on the communication sent by the third respondent dated 14.11.2016 within a period of eight weeks from the date of receipt of a copy of this order including getting appropriate orders of disbursement from the higher authorities. After receipt of the same, the third respondent shall pay the petitioners the amount mentioned by it in the counter affidavit filed earlier. The said amount will have to be paid in tune with the audit report dated 31.03.2015 which was also made applicable to the case of the petitioners in W.P.No.13069 of 2016. The said exercise has to be done by the third respondent within

a period of six weeks from the date of receipt of the amount as aforesaid.

7. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Director,
Handloom and Textiles,
Kuralagam, Chennai - 108.
2. The Assistant Director,
Handloom and Textiles,
No.426, Bhavani Main Road,
Erode, Erode District.

+lcc to Mr.C.Prakasam, Advocate, S.R.No.18635
+lcc to Mr.V.Balamurugan, Advocate, S.R.No.18234
+lcc to the Government Pleader, S.R.No.18812

W.P.No.37059 of 2016

sj (co)
rmp (28/03/17)

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