

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.12394 of 2012

T.Sathish

.. Petitioner

Versus

1. The Chairman and Managing Director
Bharath Heavy Electricals Limited.,
2nd Floor, Siri Fort, Asid, New Delhi - 100 049.
 2. The Executive Director
HR &CC/BHEL
BHEL House, 2nd Floor, Siri Fort, Asid
New Delhi - 100 049.
 3. The Additional General Manager,/HR,
HR-Power Sector-Southern Region
Nandanam, Chennai -600 035.
- .. Respondents

PRAYER:Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents 2 and 3 to consider the petitioner's representation dated 22.12.2011 containing several items of monetary benefits, computed in terms of money ie., Rs.85,52,457.35 payable to the petitioner herein and directing the respondents to pay the said sum to the petitioner forthwith.

For Petitioner

:: Mr.G.Elanchezhiyan
for Mr.K.V.Ramesh

For Respondents

:: Mr. A.V.Arun

ORDER

The writ petitioner had qualified as Mechanical Engineer with Bachealor in Engineering from Alagappa Chettiar College of Engineering and Technology in the year 1970. He was aged 65 years on the date of filing of the Writ Petition in the year 2012.

2. He also claimed that he did post graduate in Management studies and obtained a Decree in Master of Business Administration from Madras University. He had entered service of the respondent, namely, Bharath Heavy Electrical Ltd., on 12.06.1971 as Graduate Engineer. He joined services in Trichy as a Graduate Engineer on 08.11.1979. He was promoted as Senior Engineer (Boiler). He had been deputed to overseas service from 05.12.1978 to 24.10.1981 in Libya. The respondents had undertaken a Turn-Key-Project generating Power for Government of Libiya. At that point of time, he tendered his resignation on 12.11.1981.

3. It is his grievance that his service benefits and monetary benefits payable for the period of service from 12.06.1971 to 12.11.1981 had not been paid to him. In particular, the learned counsel for the petitioner claims that the earned leave which had been credited to the service of the petitioner namely leave encashment and his gratuity or balance of gratuity had not been released by the respondents.

4. Mr.A.V.Arun, learned counsel for the respondents had raised an objection stating that when admittedly the petitioner had resigned on 12.11.1981, agitating his rights under the service in the year 2012 after 30 years, can be termed as abandoning his claims and consequently stated that the petitioner would not be entitled for any relief whatsoever. However Mr.G.Elanchezian, the learned counsel for the writ petitioner has restricted his claim to the leave encashment and to gratuity. In his representations dated 22.12.2011, the petitioner had also sought for repatriation payment, salary for the service in Foreign State, tour travel allowance, medical bills, statutory bonus, Plant performance Bonus and Indian portion of salary for the period September 1981 to November 1981 and also salary / subsistence allowance from December 1981 to 04.01.2006 and also leave encashment and the balance of gratuity.

5. In this connection, the learned counsel for the respondents relied on C.Jacob vs. Director of Geology and Mining and another reported in (2008) 10 SCC 115 wherein the Hon'ble Supreme Court had held that whether there is termination and there is abandonment of service, there cannot be reappearance of an employee after two decade, and such employee cannot be treated as having continuity in service nor can be granted the benefit of qualifying service for pension. The ratio laid down is relied on by Mr.A.V.Arun to counter the claim for payment of leave approval concession, Repatriation payment, salary in Indian value for the service in a Foreign Site, for Medical Bills for Tour travel allowance, for statutory bonus, for plant performance bonus, Indian portion of salary for the period

September 1981 to November 1981 and also subsistence allowance from December 1981 to 04.01.2006.

6. The petitioner has resigned from service on 12.11.1981 and is therefore not entitled for any further benefits which have not being claimed within a specific period of time. The tour travel allowance and medical bills will have to be claimed within a period of three months from undertaking the travel and from the date of medical bill. Others item like statutory bonus and Indian portion of salary and Repatriation payment stand disqualified owing to the averment of the learned counsel for the writ petitioner that the leave encashment, namely earned leave which had acquired to him during the 10 years of service and the gratuity payable to him since he had qualified for receipt of the same having put in 10 years of service alone are now sought.

7. It is also the contention of the learned counsel for the respondents that the petitioner has to pay back some money and this had also been clarified in their replies.

8. In this connection, it would be only just both parties that the respondents draw a statement regarding the amounts payable with respect to earned leave and gratuity to the petitioner to which he was legally entitled for the service period between 1971 to 1981 only. The petitioner is not entitled for any claim after 1981, the date on which he had given his resignation letter. For the said 10 years period, if the petitioner is entitled for earned leave and if he is entitled for gratuity, those amounts alone can be worked out by the respondents. Correspondingly, the respondents may also work out a statement whether any amount is payable by the petitioner. Thereafter, a considered order can be passed by the respondents, either claiming money from the petitioner or making payment to the petitioner. This can give a quietus to the entire issue. It is seen that the petitioner has been agitating this issue from the year 1981 onwards. It is hoped that the respondents would pass necessary orders on the above lines on or before 31.08.2019.

9. With these observations, the Writ Petition is disposed of. No order as to costs.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

Vsg

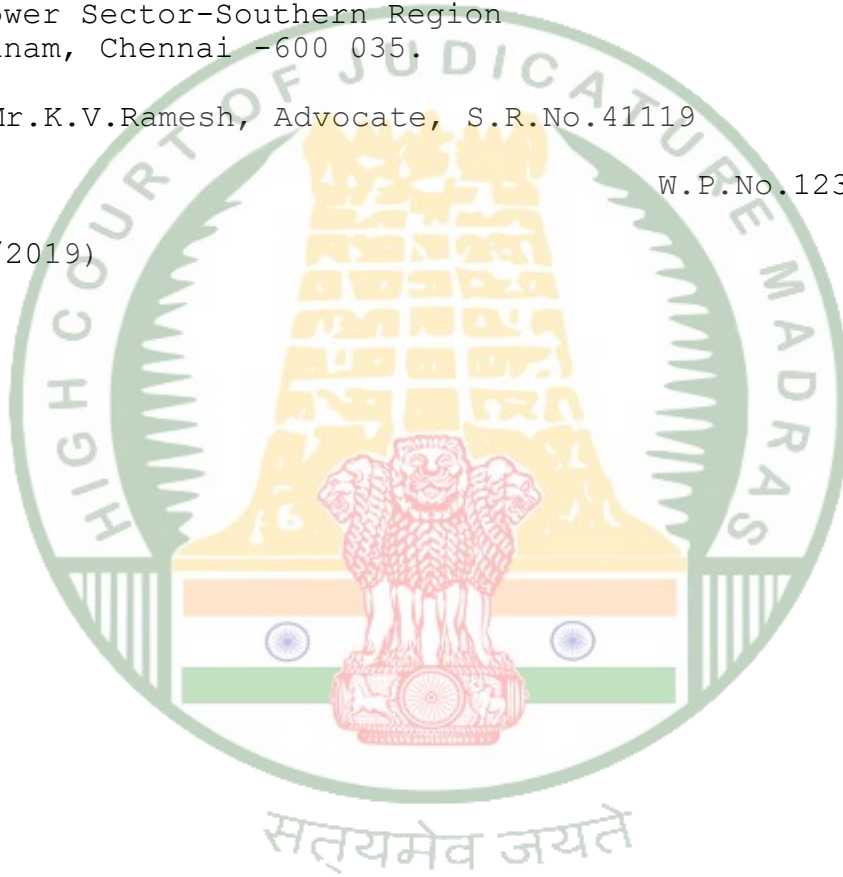
To

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+1 cc to Mr.K.V.Ramesh, Advocate, S.R.No.41119

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AG(CO)
SSM(14/06/2019)



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