

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.04.2019

Delivered on: 16.04.2019

C O R A M

The Honourable Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.50430 of 2006

- 1.Nagabhooshanam
- 2.Ravikumar
- 3.Nandakumar
- 4.Geetha
- 5.Shanthi
- 6.Kumar
- 7.Suguna
- 8.Kamala
- 9.Lakshmi

Vs

.... Petitioners

1. The Presiding Officer,
Central Government Labour Court,
High Court Compound,
Chennai-104.
2. The Management,
Food Corporation of India,
Chennai-108.

.... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the 1st respondent herein in C.C.No.36 of 2000 on the file of the Central Government Labour Court, Chennai (the 1st respondent herein) order, dated 02.06.2004 and to pay the amounts claimed by the legal heirs viz., Family Pension and Gratuity in C.C.No.36 of 2000 amounting to a total amount of Rs.11,631.82.

For Petitioner : Mr.R.Lawrence
For Respondents : R1-Court
Mr.M.Vijayakumar for
M/s.M.Imthias for R2

O R D E R

This Writ Petition is filed challenging the order of the Labour Court, Chennai in Claim Petition No.36 of 2000.

2.The Petitioners are the wife and children respectively of an ex-employee of the second Respondent. The admitted position is that the husband of the first petitioner worked as a Loader (Mazdoor) in the second Respondent from the year 1965 to 31.08.1986. It is stated that he took voluntary retirement on 31.08.1986 in accordance with the Voluntary Retirement Scheme in force at the relevant point of time. It is stated that he expired on 06.08.1999, i.e. about 13 years after his voluntary retirement. The claim petition was filed by the petitioners herein before the first Respondent on 13.01.2000 under Section 33(c)(2) of the Industrial Disputes Act, 1947 claiming Family Pension for the period from 01.09.1999 to 31.12.1999 aggregating to a sum of Rs.3,200/-. In addition, the petitioners claimed differential gratuity for 21 years from 1965 to 1986 at Rs.2,000/- p.m. amounting to Rs.7,431.82.

3.The first Respondent, by order dated 02.06.2004, rejected the claim petition on the basis that the claim petition was filed after the lapse of 13 years and that the ex-employee, viz., Dharman had not filed a petition regarding his claim for pension or for differential gratuity during his life time. On behalf of the petitioners, a copy of the Death Certificate of the ex-employee, a copy of the Legal heirship Certificate issued by the Tahsildar and a copy of a Government Order were marked as exhibits. Oral evidence was also adduced through PW1 viz., the first Petitioner in the writ petition. On the basis of aforesaid evidence, the first Respondent concluded that the petitioner had not adduced satisfactory and acceptable evidence and that, therefore, the claim petition is rejected.

4.In the counter statement before the first Respondent, the second Respondent herein admitted that Mr.Dharman was employed as a worker by the said second Respondent at the Madras Harbour and that he opted for the Voluntary Retirement Scheme and retired from service with effect from 31.08.1986. The second Respondent further stated that at the time of his retirement, the said Dharman received all the amounts due from the second Respondent as per the Voluntary Retirement Scheme. The second respondent further stated that the claim before the first Respondent was not maintainable in view of the inordinate delay of 14 years and also because Mr.Dharman received all his dues, including gratuity, at the time of his retirement and that therefore, there is no merit in the petition.

5.At the hearing, the learned counsel for the Petitioner submitted that the second Respondent is a Central Government Undertaking and that therefore, the husband of the first Petitioner was in a pensionable post. Accordingly, he submitted that the wife and children are entitled to Family Pension. In order to substantiate his submission, the learned counsel

referred to an order passed by this Court in P.Balasubramaniam vs. The Union of India represented by its Secretary-Food, Ministry of Consumer Affairs, Food and Public Distribution Department in W.P.No.35827 of 2015 and batch of cases, dated 01.10.2018, wherein it was held that a person who has completed qualifying service as per Central Civil Services (Pension) Rules, 1972, would be entitled to pension and this right cannot be divested because they availed leave without proper authorisation. The learned counsel also relied upon the details gathered from Wikipedia in respect to the nature of the second Respondent, which is a Central Government Undertaking.

6.In response, the learned counsel for the Respondents submitted that the services of Mr.Dharman were engaged for loading and unloading at the Madras Harbour and that this post is non-pensionable. He further submitted that Mr.Dharman opted for the Voluntary Retirement Scheme in 1986 and received all his dues, including gratuity in full. He further submitted that the claim petition before the first Respondent was not maintainable in view of laches.

7.The affidavit, documents on record and the oral submissions of both sides were carefully considered.

8.It is the admitted position that the ex-employee of the second Respondent took voluntary retirement in accordance with the Voluntary Retirement Scheme. It is also admitted that he received all his dues under the said Voluntary Retirement Scheme, including gratuity. The grievances of the Petitioners are that the post is pensionable and that he was not paid full gratuity. However, it is evident from the record that the ex-employee did not make a claim either for pension or for differential gratuity between 1986 (date of retirement) and 06.08.1999 (date of death). In effect, the Petitioners failed to prove that it was a pensionable post or that gratuity was not paid in full. All these facts were duly considered by the first Respondent while rejecting the claim petition of the Petitioners herein, which was filed on 13.01.2000. As such, there is no infirmity in the order of the first Respondent whereby the claim petition of the Petitioners was rejected.

9.Accordingly, the Writ Petition is dismissed. No order as to costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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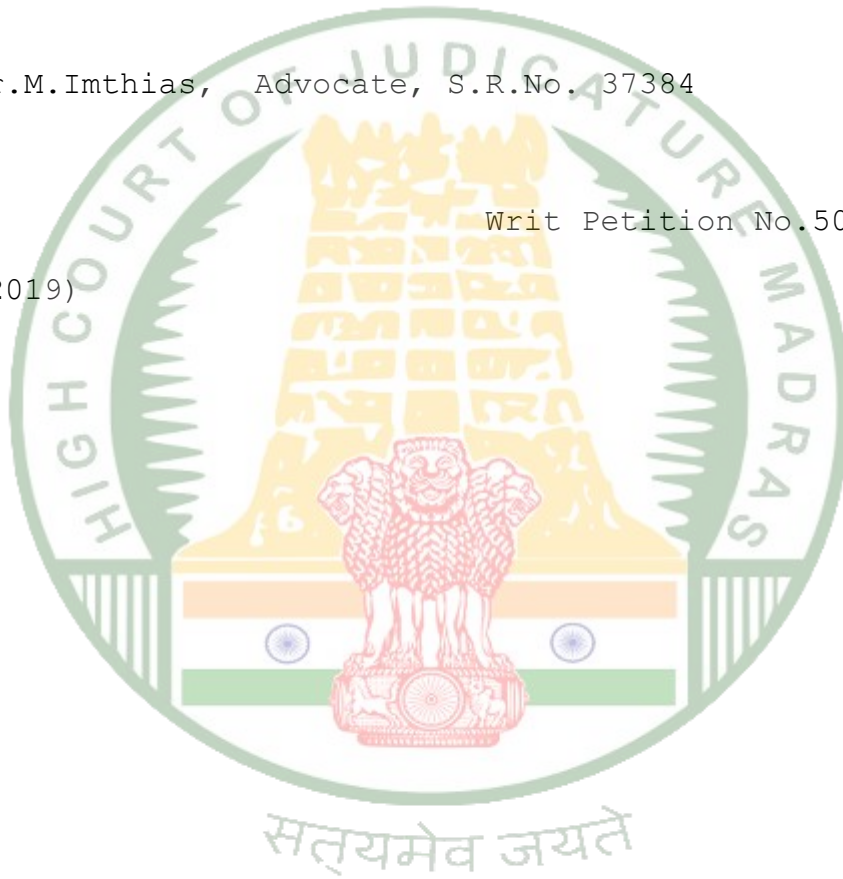
To

1. The Presiding Officer,
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Chennai-104.
2. The Management,
Food Corporation of India,
Chennai-108.

+1cc to Mr.M.Imthias, Advocate, S.R.No. 37384

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GP(CO)
GN(22/05/2019)



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