IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.25730 of 2004

A.Joseph Raj ... Petitioner

Vs.

1. Director of Handlooms,
   Kuralagam, Chennai.
2. Joint Director of Handlooms,
   Madurai - 20.
3. Managing Director,
   Tamil Nadu Textile Corporation,
   Coimbatore.
4. The Special Officer,
   M.Kai 207, Aundipati Powerloom Weaver,
   Co-operative Society (Primary Type),
   Jakkampatty,
   Aundipatty (Post) - 625512.
   (Since wound up)
   Presently Rep. by Liquidation Officer,
   187, Vadakku Veli Vethi,
   Opposite to Sethupathi High School,
   M.D.C.C. Bank,
   Madurai 625 001. ... Respondents

[R4 is impleaded as per the order of this Court, dated 23.09.2016 in WPMP.No.61 of 2015 in WP.No.25730 of 2004]

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to Na.Ka.31268/2002/K2, dated 15.03.2004 issued by the 1st respondent, quash the same and direct the first respondent to reinstate the petitioner in the Department of Handloom and Textile of Tamil Nadu.

For Petitioner : Mr.S.Arunachalam,
for M/s.Arunachalam Assoc.

For Respondents : Mrs.V.Annalakshmi, G.A, for RR21,2 and 4
Mr.S.Saravanakumar, for R3

O R D E R

This petition has been filed to quash the order of the first respondent dated 15.03.2004 in Na.Ka.31268/2002/K2 and direct the first respondent to reinstate the petitioner in the Department of Handlooms and Textiles of Tamil Nadu.

2. It is not in dispute that the petitioner was initially appointed by the third respondent as Supervisor in the Tamil Nadu Textile Corporation. In the year 1987, some of the Powerloom Complexes under the third respondent were converted as Weavers Co-operative Society, in which, the services of some of the third respondent's employees were transferred to the respective Cooperative Societies. The petitioner herein, who has initially rendered his service under the third respondent, was transferred to Jakkampatti Powerloom Complex in Madurai circle / fourth respondent. While the petitioner was employed under the fourth respondent Society, his service came to be retrenched, by an order dated 15.03.2004, which is under challenge in the present Writ Petition.

3. The learned counsel for the petitioner submitted that the retrenchment itself is bad in law, since the respondents had not followed the last come first go principle and however, he is entitled for retrenchment compensation.

4. The learned counsel appearing for the third respondent, on the other hand, submitted that after the transfer of service of the petitioner from third respondent Corporation to the fourth respondent, it is the responsibility of the first respondent to answer the grounds raised by the petitioner herein and as such, he has no role to pay.

5. The learned Government Advocate appearing for the respondents 1, 2 and 4, on the other hand, submitted that the petitioner herein was not a workman as defined under the Industrial Disputes Act and as such, the provisions relating to retrenchment may not be applicable to the petitioner herein. It is the submission of the learned Government Advocate that since he was employed as a Manager, the principle of "last come first go" is not required to be adopted. Even otherwise, since the service of the petitioner had become redundant in view of the change of nature of the work in the Societies, they were constrained to terminate the service of the petitioner on payment of one month salary, in lieu of notice period, which is legal and there is no infirmity in the order passed by the first respondent.

6. I have given careful consideration to the submissions made by the respective counsels and perused the materials available on record.

7. Before adverting to the grounds raised by the respective counsels, it would be appropriate to look into the circumstances under which, the Societies were formed, in which, the petitioner had been accommodated.

8. The Tamil Nadu Textile Corporation had sent a proposal to set up Powerloom Complexes in different centres in Tamil Nadu for the benefit of the Handloom Weavers, who were identified for assistance for the Integrated Rural Development Programme. On the basis of the proposals, 7 Powerloom Complexes were set up, in which, the powerloom in Jakkampatti in Madurai District was one among them, where the petitioner was transferred.

9. The Director of Handlooms and Textiles was required to form Co-operative Societies for each of the Powerloom Complexes in order to make the beneficiaries as members of the Society and thereby become the owners of the community assets and each of the Society was required to work under the overall supervision of the Tamil Nadu Textile Corporation. Some of the employees, who were employed under the Tamil Nadu Textile Corporation, came to be posted under various Societies.

10. When the issue touching upon the service condition of the employees arose, the Director of Handlooms and Textiles had clarified that the transfered employees of the 7 Powerloom Complexes, which were converted into separate Co-operative Societies, will continue to get the existing benefits including one pattern bonus, gratuity etc. As such, the employees, who were transferred form the Tamil Nadu Textile Corporation Ltd. to the various Co-operative Societies continued to be treated as employees of the erstwhile Corporation, insofar as it relates to their service conditions.

11. In this background, the facts of the present case is that the petitioner herein was originally appointed under the Tamil Nadu Textile Corporation on 11.03.1983. After about 5 years of service under the third respondent herein, on 25.02.1987, through the proceedings of the Director of Handlooms and Textiles, the petitioner's services were transfered to the fourth respondent Society, wherein, he was posted as a Factory Manager. Due to the fact that the Members of the Society adopted to have the weaving activity shifted to their own place or other places, the Society functions, as such, started to deteriorate, which led to a decision to retrench some of their employees.

12. Consequently, the petitioner's services under the fourth respondent Society came to be retrenched through an order dated 10.08.2000. While retrenching the service of the petitioner, the fourth respondent herein had indicated in the said order dated 10.08.2000 that the petitioner was not a workman as defined under the Industrial Disputes Act, 1947 and therefore, he would not be entitled for retrenchment compensation and thereby, one month salary was paid to the petitioner, in lieu of notice period and his services were terminated.

13. It is rather unfortunate that the petitioner, who was originally employed from 11.03.1983, has been unceremoniously sent out after 17 years of service, for no fault of his, with a compensation of one month salary. The reason adduced is rather disappointing that he is not a workman and therefore, he is not entitled for compensation. It is nobody's case that the service of the petitioner came to be terminated in view of his misconduct. The petitioner was shifted from third respondent Corporation to the Society based on a policy decision taken. From the proceedings dated 25.02.1987 of the Director of Handlooms and Textiles, it is seen that the decision to shift the erstwhile employees of the Tamil Nadu Textile Corporation to the various Societies, was already taken and the employees had no other choice than to be transferred.

14. In view of the subsequent developments, the Society had started incurring losses, which constrained them to retrench the service of some of their employees. Though the decision to transfer the petitioner from the third respondent to the Society was unanimously taken and the service benefits which he had been enjoying under the third respondent, were also extended to the petitioner after he was transfered to the Society, the Director of Handlooms and Textiles cannot totally disown the petitioner and refuse to recognise his services he had rendered from the year 1983 onwards. In the circumstances of this nature, the first respondent herein ought to have foreseen the prejudice that would be caused to such employees, who were accommodated, at the instance of the first respondent in the Society and compensate him in the crisis.

15. Earlier, as a matter of policy, the Powerloom Complexes were converted to that of Co-operative Societies and the transfer came to be challenged before this Court in a batch of Writ Petitions in W.P.No.11444 of 1990, etc., and this Court, by an order dated 09.04.1999, had recorded the memo of the Director of Handlooms and Textiles dated 22.07.1988, whereby the first respondent will continue to allow the same benefits, as allowed by the Tamil Nadu Textile Corporation Ltd., to the transferred

employees of the Society and also continue the implementation of the EPF Scheme.

16. It was further observed in the said order of this Court that the Director of Handlooms and Textiles is bound to implement the undertaking given in the counter in that Writ Petition that all the benefits accrued to the petitioners would be allowed and the petitioners would be given all the benefits as given to the employees of the Tamil Nadu Textile Corporation Ltd. It is in this background, the petitioner has now been retrenched, paying one month salary as compensation.

17. In my view, when the earlier policy decision taken by the Government to have the employees of the Tamil Nadu Textile Corporation transfered to the Co-operative Societies, there is a duty cast on them to also protect their interest in the time of crisis, like in the present case, and suitably compensate them on par with other Government employees, if they had faced a similar situation. Though the petitioner has not been retrenched under the provisions of the Industrial Disputes Act, the fact remains that his service came to be terminated, otherwise than as a punishment. As such, the petitioner would be entitled to receive compensation for the service he has rendered from 1983 onwards till his date of retrenchment.

18. In a situation akin to the present case, when employees were terminated, this Court had ordered for payment of backwages at the rate of 50% of the last drawn salary, in a judgment passed by the Division Bench of this Court dated 19.06.2006 in Writ Appeal Nos.220 and 2158 of 2000 (R.Manoharan vs. The Director of Handlooms and Textiles, Kuralagam, 2nd Floor, Madras and others). By adopting the same yardstick, this Court is also of the view that the petitioner can receive 50% of his last drawn salary from 15.03.2004 (i.e.,) the date of his retrenchment till 02.01.2015, when the petitioner herein had reached his age of superannuation, together with interest at the rate of 6% per annum.

19. Since this Court had treated the petitioner to be in his service from the date of his retrenchment till date, he would also be entitled for other terminal benefits including gratuity. The first respondent shall release the entire monetray benefits including the gratuity to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. The Writ Petition stands ordered accordingly. No costs.

20. At this juncture, it is brought to the notice of this Court that there are some dues owed by the petitioner to the fourth respondent Society, which requires to be adjusted from out of the monetary benefits to be extended to the petitioner.

The respondents are at liberty to deduct the amount, which the petitioner owes to the Society, from out of the monetary benefits ordered today.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

pvs

To
1. Director of Handlooms,
Kuralagam, Chennai.

2. Joint Director of Handlooms,
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3. Managing Director,
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Coimbatore.

4. The Liquidation Officer,
187, Vadakku Veli Vethi,
Opposite to Sethupathi High School,
M.D.C.C. Bank,
Madurai 625 001.

+1cc to Mr.S.Saravanakumar, Advocate SR.No.27660

+1cc to M/s.S.Arunachalam Associates, Advocate SR.No.26407

+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No.26649

+2cc to Government Pleader SR.No.27229,27464

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SSV(CO)
GMY(21/05/2019)