IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.4809 of 2008
and
M.P.No.1 of 2008

K.Selvamony (deceased)

2.S.Kalavathy

3.K.S.Kanna

4.K.S.Girija Velmurugan

5.K.S.Kalpana Devi

6.K.S.Kalaiselvan .. Petitioners

(Petitioners 2 to 6 are substituted as LRS of deceased K.Selvamony, as per the order of this Court dated 24.02.2017 made in W.M.P.No.4598 of 2017 in W.P.No.4809 of 2008)

Vs.

1.Government of Tamil Nadu,
Represented by its Secretary,
Animal Husbandry Department,
Fort St.George, Chennai - 600 009.

2.Commissioner for Milk Production and
Dairy Development,
Madhavaram Milk Colony,
Chennai - 600 051. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus, calling for the concerned records from the 2nd respondent, quash the order of the 2nd respondent dated 02.07.2007 bearing Na.Ka.No.23749/B5/1998 and consequently direct the respondents to pay a sum of Rs.1,34,109/- towards gratuity to the petitioner after deducting the sum due towards House Building Advance of Rs.14,400/- by charging the applicable interest on the same upto 30.12.1991.

For Petitioners : Mr.Balan Haridas
For Respondents : Ms.T.Girija
Government Advocate

ORDER

The petitioner has come out with the present Writ Petition challenging the order of the 2nd respondent dated 02.07.2007 bearing Na.Ka.No.23749/B5/1998 and for a direction to the respondents to pay a sum of Rs.1,34,109/- towards gratuity to the petitioners 2 to 6 after deducting the sum due towards House Building Advance of Rs.14,400/- by charging the applicable interest on the same upto 30.12.1991.

2.Heard the learned counsel appearing for the petitioners as well as the learned Government Advocate appearing for the respondents and perused the entire materials on record.

3.The petitioners 2 to 6 are the legal heirs of original petitioner K.Selvamony. According to the first petitioner, while he was working as Superintendent in Tamil Nadu Dairy Development Department on 01.02.1981, Tamil Nadu Co-operative Milk Producers Federation was formed in supersession of Tamil Nadu Dairy Development Department. On such formation, willingness was sought for from the employees from Tamil Nadu Dairy Development Department to be absorbed in the Tamil Nadu Co-operative Milk Producers Federation.

4.As per G.O.Ms.No.1921, Agriculture (MP.I) Department dated 08.11.1983, the Government has stated that employees who have opted for being absorbed in the services of the Federation, immediate cash payment of gratuity would be given. The first petitioner opted to be absorbed and he ceased to be a Government servant with effect from 31.01.1981 and he is entitled to gratuity for his total service from 03.12.1963 to 31.01.1981. The respondents ought to have settled the gratuity immediately. The first petitioner has availed housing loan from the second respondent and the first installment of Rs.14,400/- was disbursed to the first petitioner. The other two installments were not given to the first petitioner. The first petitioner by his letter dated 09.08.1991 requested the second respondent to adjust his housing loan dues from and out of the balance gratuity amount. The second respondent rejected the said request by his letter dated 30.12.1991, on the ground that gratuity is payable to the first petitioner only when he retires from service and the gratuity is not payable before retirement and called upon the first petitioner to repay the housing loan of Rs.14,400/- together with interest immediately.

5.Again, the first petitioner by the letter dated 02.11.2001 requested the second respondent to pay the gratuity together with compound interest at the rate of 12% per annum from 01.02.1981, without any delay. The second respondent by the impugned letter dated 02.07.2007 informed the first petitioner that he is entitled to a sum of Rs.5,015/- and after calculating the compound interest, the amount of gratuity payable to the first petitioner is only Rs.8,407/- and the first petitioner has to pay the housing loan of Rs.14,400/- together with interest totaling to Rs.31,116/- as on 30.06.2007 and the first petitioner after adjusting the gratuity, amount payable to him is liable to pay a sum of Rs.22,709/-.

6.The first petitioner made a representation dated 14.07.2007 and issued notice through his advocate dated 15.12.2007 to the second respondent as he has not received any amount and filed the present Writ Petition.

7.According to the first petitioner, as per G.O.Ms.No.1921, Agriculture (MP.I) Department dated 08.11.1983, the gratuity is payable with immediate effect, once the employee is absorbed in the Tamil Nadu Co-operative Milk Producers Federation. The first petitioner was absorbed in the Federation with effect from 01.02.1981 and therefore he is entitled to the payment of gratuity on that date itself. The gratuity payable to him is Rs.5,945/- and the respondents are liable to pay the compound interest at the rate of 12% per annum from 01.02.1981. The gratuity amount payable together with compound interest is Rs.1,34,109/- and the respondents are liable to adjust the amounts due towards housing loan and are liable to pay the balance gratuity amount to the first petitioner. The contention of the respondents that gratuity is payable only after the date of retirement is contrary to the G.O.Ms.No.1921, Agriculture (MP.I) Department dated 08.11.1983 and prayed for setting aside the impugned order of the second respondent dated 02.07.2007 and direct the respondents to pay a sum of Rs.1,34,109/- towards gratuity to the first petitioner after deducting the amount of Rs.14,400/- due towards House Building Advance by charging applicable interest on the same up to 30.12.1991.

8.The second respondent filed counter affidavit and denied all the averments in the affidavit filed in support of the above Writ Petition. Ms.T.Girija, learned Government Advocate appearing for the respondents contended that gratuity is payable only when the employee retires from service or due to the death of the employee. The Hon'ble Apex Court in Civil Appeal Nos.1387 to 1395 of 1993 held that employees who retire after 01.02.1981 shall be deemed to have been opted to join the service of the Federation permanently and as such they would be entitled to terminal benefits as per G.O.Ms.No.1921, Agriculture (MP.I)

Department dated 08.11.1983, up to 31.01.1981. The gratuity amount payable to the petitioner is only Rs.5,015/- and the payment of interest there on does not arise as the first petitioner has not adjusted the amounts due to the Government. The first petitioner is not entitled to payment of gratuity when the amounts are due to the Government. There is no delay on the part of the respondents in paying the gratuity amount to the first petitioner and the petitioners 2 to 6 are not entitled to any payment of interest and prayed for dismissal of the Writ Petition.

9.The first petitioner filed reply to the counter affidavit filed by the respondents reiterating the averments in the affidavit. The learned counsel appearing for the petitioners further stated that housing loan was recovered by the respondents from the benefits of the first petitioner and submitted that the first petitioner is entitled to compound interest at the rate of 12% per annum from 01.02.1981 or atleast from June 1991, till the date of absorption of the petitioner in the Federation.

10.It is not in dispute that first petitioner exercised his option to be absorbed in the second respondent Federation. The first petitioner's option was exercised as per G.O.Ms.No.1921, Agriculture (MP.I) Department dated 08.11.1983. According to first petitioner, the gratuity has to be paid immediately when he expressed his option in the year 1981 itself. On the other hand, it is the contention of the respondents that the gratuity can be paid only when the employee retires from the service on attaining superannuation. The contention of the respondents that gratuity is payable only on the retirement of employee is not applicable in the present case. As per G.O.Ms.No.1921, Agriculture (MP.I) Department dated 08.11.1983, by which the petitioner exercised his option to be absorbed in the second respondent, the gratuity is payable immediately. The option exercised by the petitioner was accepted by the respondents in June 1991 and therefore the petitioner is entitled to payment of gratuity in 1991 itself and not on the date of retirement of the petitioner. In view of G.O.Ms.No.1921, Agriculture (MP.I) Department dated 08.11.1983, the second respondent is liable to pay gratuity together with compound interest on the gratuity amount of Rs.5,015/-. The second respondent is directed to calculate the interest payable on the gratuity amount of Rs.5,015/- from 01.06.1991 till the date of payment, within a period of eight weeks from the date of receipt of a copy of this order. The petitioners have given calculation from 31.01.1981 till 31.05.2019. The petitioners are directed to calculate the interest from 01.06.1991 to 31.07.2019 so as to enable the second respondent to pay the amounts after deducting the sum due towards House Building Advance of Rs.14,400/-, within the time fixed by this Court.

11.In the result, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

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To

1.Government of Tamil Nadu,
Represented by its Secretary,
Animal Husbandry Department,
Fort St.George, Chennai - 600 009.

2.Commissioner for Milk Production and
Dairy Development,
Madhavaram Milk Colony,
Chennai - 600 051.

+1cc to the Mr. Mr.Balan Haridas,Advocate SR.No.65768

NRL(CO)
CB(30/09/2019)

W.P.No.4809 of 2008 and
M.P.No.1 of 2008