

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.09.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.1541, 1576, 1577, 265, 266, 267 & 268 of 2016
and

W.M.P.Nos.154, 155, 156 & 157 of 2016

WMP Nos.6958 & 6959 of 2016 and

WMP Nos.1313 & 1340 & 1341 of 2016 and

WMP Nos.12084 of 2016 & 12085 of 2016

M/s. Southern Petrochemical Industries Corporation Limited,
SPIC Building,
No.88, Mount Road,
Guindy,
Chennai - 600 032.

Rep by its Authorized Signatory ... Petitioner
in all WPs

..Vs..

1.The Presiding Officer,
II Additional Labour Court,
Chennai. ... 1st Respondent
in all WPs

2.D.Kalyanaraman ... 2nd Respondent
in W.P.No.1541/2016

3.T.M.Parameswari @ R.Parameswari ... 2nd Respondent
in W.P.No.1576/2016

4.K.Sethumadhavan ... 2nd Respondent
in W.P.No.1577/2016

5.M.Ashok Kumar ... 2nd Respondent
in W.P.No.265/2016

6.C.Bagavan ... 2nd Respondent
in W.P.No.266/2016

7.I.Dhakshinamurthy ... 2nd Respondent
in W.P.No.267/2016

8.C.V.Parameswaran ... 2nd Respondent
in W.P.No.268/2016

PRAYER in W.P.No.1541 of 2016 : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified, calling for the records of the first respondent in C.P.No.493 of 2013 and quash the order dated 04.06.2015.

PRAYER in W.P.Nos.1576, 1577, 265, 266, 267 & 268 of 2016 : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified, calling for the records of the first respondent in C.P.Nos.393, 395, 392, 394, 227, 228 of 2013 and quash the order dated 12.02.2015.

For Petitioner
in all WPs : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.,

For R1
in all WPs : Labour Court
For R2
in all WPs : Mr.P.Palani

COMMON ORDER

The orders dated 04.06.2015 and 12.02.2015, passed by the first respondent in Contempt Petition Nos.493, 393, 395, 392, 394, 227, 228 of 2013 are under challenge in these writ petitions.

2. The writ petitioner Company was registered and it was carrying the business of manufacturing and trading of fertilizers. The petitioner diversified its operations and formed various divisions, viz., Bio-Technology Division, Shipping Division, Heavy Chemicals Division and Engineering Construction Division. During the year 1981, the Trust was formed to administer the superannuation scheme for all employees of the petitioner company. In 1984, the benefit of pension was introduced to the staff and workmen and for this, a separate Trust was created. To avail the benefit of superannuation scheme, a person should have worked for 25 years and should have retired. In such an event, he will be entitled to 50% of his last drawn wages as pension and a person with 15 to 20 years service will be entitled to pro rata pension. During the year 1988, the petitioner company wanted to diversify into pharmaceutical and formed a separate Division in which 18 persons including the contesting respondents were recruited. Clause 13 of the Appointment Order provided for the benefit of the superannuation scheme.

3. The said clause stipulates that the employees will be eligible for Gratuity as prescribed under the Gratuity Act 1972, and the rules made thereunder.

4. In the year 1990, the Company got approval for setting up a factory and accordingly, it set up a Research Centre at Maraimalar Nagar and factory near Cuddalore. The 18 employees who were working in the pharmaceutical business were transferred to pharmaceutical Division and were given separate orders of appointment and along with them some other employees of fertilizer division were also transferred and appointed afresh into the pharmaceutical division. In this regard, the learned counsel for the writ petitioner states that the pharmaceutical division was bifurcated from other divisions and it was maintained as separate division for all purposes including the business transactions. Accordingly, a separate appointment order was issued to all these employees during the year 1990. On a perusal of the appointment order, pay allowances and benefits being drawn by those employees in the petitioner company was protected. However, there is no clause in respect of payment of pension scheme, which is provided in respect of the employees of the writ petitioner company.

5. The learned counsel for the petitioner states that no such pension scheme was made available in respect of the employees, who were reappointed in pharmaceutical division and in the appointment order also, there is no such promise. In this regard, in the absence of any such specific clause of pension scheme, the employees are not entitled to claim pension under the Pension Scheme formulated by the writ petitioner company. This apart, the pension scheme was being implemented by separate appointment and the Trust has not been impleaded as a party in the claim petition and otherwise also the appointment orders were issued separately in respect of these employees by pharmaceutical division and therefore, these employees are governed under the terms and conditions of the appointment order issued in the year 1990 by pharmaceutical division of the petitioner company.

6. The learned counsel for the writ petitioner states that the pharmaceutical division was being maintained separately and a separate Union was recognized and the settlement of wage structures were made separately. The 12/3 settlements made separately for the pharmaceutical division and the Unions were also agreed the terms and conditions of the settlement.

7. In this regard the attention of this Court was solicited in respect of the demand made by the Unions in respect of the Pension Scheme to the employees of the pharmaceutical division is the charter of appointments given in the year 1992 by SPIC Pharma Union. Clause 22 states that "superannuation scheme to be introduced". The said demand was made by Union repeatedly to the Management and the superannuation pension scheme was not extended in respect of the employees of the pharmaceutical division by the writ petitioner management. Contrarily, all other benefits as per the statement had already been settled.

8. It is brought to the notice of this Court that pharmaceutical division had already been closed during the years 2011-2012, as of now the division is not functioning. All the employees were had received their terminal and other benefits including the workmen in these present writ petitions. It is further contended that two of the workmen were serving as the officers of the pharmaceutical division and they are not workmen within the definition of 2(s) of the Industrial Disputes Act. One Mr.Sethumadhavan and Mrs.Paremeshwary were working in the officer cadre and they are not working under Section 2(s) of the Industrial Disputes Act. However, the said officials were also settled with the benefits and they had received the same.

9. The learned counsel for the writ petitioner reiterated that the Labour Court mainly proceeded only on the basis of the appointment order issued in the year 1998 by the writ petitioner company. The Labour Court has failed to consider the subsequent appointment order issued by the pharmaceutical division of the writ petitioner company, which was constituted as a separate division and a separate trade union was recognised and separate terms and conditions were issued and the Labour Court has not considered the terms and conditions of the appointment issued by the pharmaceutical division of the writ petitioner company. Therefore, the order of the Labour Court is perverse and liable to be scrapped.

10. The respondent workmen states that they were appointed by the writ petitioner company in the year 1988 and the superannuation scheme was introduced and made available to these workmen under the terms and conditions of appointment. The workmen admitted the fact that a second appointment order dated 29.05.1990 was issued to the workmen. However, in the petitioner company's earlier appointment order, pay allowances and benefits

being drawn by those employees is fully protected. Taking advantage of the said clause, the workmen contended that the pension scheme is also extended to these reappointed employees in pharmaceutical division. They have mainly proceeded on the ground that they initially appointed in the department of pharmaceutical and therefore, the rules made for the pharmaceutical division is not applicable for these 18 employees who were reappointed in the year 1990 by the writ petitioner company. It is admitted that during the year 1998, there was no pharmaceutical business and the workmen recruited by the writ petitioner company only in the year 1990 and thereafter, the workmen were appointed in the pharmaceutical division. The petitioners in the claim petition mainly contended in view of the fact that the rights were already ensured in the initial appointment order, there is no necessity for any further adjudication and therefore, the claim petition under Section 33 (2) of the Industrial Disputes Act is maintainable. When the rights of the workmen are already crystallized then the claim petition under Section 33 (2) can be entertained by the Labour Court. Thus, the ground raised by the writ petitioner under Section 33(2) cannot be entertained and is in violation of the initial appointment order issued in favour of these workmen.

11. This Court is of an opinion that it is an admitted fact that the 18 workmen were initially appointed by the writ petitioner company in the year 1998. Further it is an admitted fact that during the year 1998, the superannuation scheme was available in the company and all these 18 workmen were made eligible to avail the superannuation scheme. It is further admitted that during the year 1990, a separate division namely pharmaceutical division was created and got approval for installation of manufacturing unions in Cuddalore and Maraimmal Nagar, Chengalpattu District. On account of the formation of a new pharmaceutical division, 18 employees were reappointed in the said division. It is further admitted that separate trade unions were recognised and separate 12/3 settlements were entered into between the management and the workmen. When a separate division was created and a separate Union was formed and the appointment orders were also issued afresh in respect of all these employees, setting out the terms and conditions of appointment, there is no reason to claim the benefits granted in the earlier appointment order. Once a fresh appointment order is issued based on certain terms and conditions, the employee is bound by that appointment order itself, as the offer of appointment was accepted during the relevant point of time. It is not disputed by workmen that a separate Trade Union was recognised and settlements were also independent and unconnected with the other divisions of the writ petitioner company. This being the factum for all the purposes, the pharmaceutical

division is to be considered as a separate unit and service conditions are also unconnected with the other divisions of the petitioner company.

12. The recognized Trade Union also raised demand to extend the superannuation scheme on several occasions. The charter of demands submitted by the union reverses that the demand for grant of superannuation pension is also included and the said demand was repeatedly made by the Unions. However, the Management has not agreed to extend the superannuation scheme, on account of certain reasons and subsequently the division itself was closed down during the year 2011-12. An admitted fact that the pharmaceutical division is not functioning as of now and it was closed in all respects during the year 2011-12.

13. This Court is of the considered opinion that the employees are governed under the terms and conditions of the appointment as well as the benefits extended and protection of pay and allowances cannot be interpreted for the purpose of extending the superannuation scheme. It is a special scheme introduced by the writ petitioner company for the employees. Undoubtedly, the scheme was made available to the other employees of the writ petitioner company working in other divisions and a separate trust was created for the purpose of extending this superannuation scheme. However, superannuation scheme was not extended to the pharmaceutical division and the terms of the appointment order clearly enumerates that there is no such scheme made available to the employees reappointed in pharmaceutical division of the writ petitioner company. Under these circumstances, the fact remains that the recognized trade unions raised demand in their charter of demands on several occasions. However in view of the fact that separate terms and conditions were issued under the appointment order and they are not eligible for superannuation scheme. These employees who appointed in the pharmaceutical division, claimed benefits under superannuation scheme based on the initial appointment order issued in the year 1988 by the writ petitioner company, in spite of the other division.

14. It is brought to the notice of this Court that all other employees were employed in pharmaceutical division i.e., more than 1000 employees were accepted the VRS Scheme and also received the settlements and these employees have not claimed any such superannuation scheme. When more than 1000 employees are settled with the benefits and accepted the same, now the workmen in the present writ petitions cannot claim any benefit under the superannuation scheme. The workmen in the present writ

petitions had also received the settlements long back. Under these circumstances, the order of the Labour Court in the claim petition is untenable.

15. On perusal of the order passed in the claim petitions, this Court is of the opinion that the Labour Court proceeded mainly on the earlier appointment order issued to these workmen during the year 1998. Further the Labour Court proceeded on the pretext that the protection was given to the employees in respect of the pay and allowances and therefore, all other schemes including the superannuation scheme is also to be extended. Such a broad interpretation cannot be provided in support of extending such special scheme like superannuation provided by the writ petitioner to the employees and in the event of specific Agreement/ appointment order, the said scheme cannot be made applicable to all other employees who were appointed in another division on certain terms and conditions.

16. This being the legal principles to be followed, the order of the Labour Court is perverse and not in consonance with the settled legal principles. Accordingly, these writ petitions stand allowed and the orders dated 04.06.2015 and 12.02.2015, passed by the first respondent in Contempt Petition Nos.493, 393, 395, 392, 394, 227, 228 of 2013 are quashed. No costs. Consequently, all the connected miscellaneous petitions stand closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
II Additional Labour Court,
Chennai.

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