

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.638 of 2012

Tyrone O "Brien

.. Petitioner

Vs.

1.The Commissioner of Labour,
Government of Pondicherry,
Pondicherry.

2.New Horizon Sugar Mills Limited,
Ariyur, Kandamangalam PO,
Pondicherry - 605 102.

.. 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 records of the first respondent relating to his communication dated 18.08.2011, quash the same and direct the 1st respondent to pay to the petitioner Rs.2,38,363/- (Rupees two lakhs, thirty eight thousand and three hundred and sixty three only) towards arrears of pay due to the petitioner as Purchase Officer of the 2nd respondent with interest at 12% per annum from January 2011 till payment.

For Petitioner : Ms.R.Meenal

For R1 : Ms.G.Djearany
Government Advocate (Pondicherry)

For R2 : Mr.A.Venkatesh Kumar for
M/s.Gupta & Ravi

O R D E R

Writ Petition filed for issuance of a writ of Certiorarified Mandamus, calling for the records of the first respondent relating to his communication dated 18.08.2011, quash the same and direct the first respondent to pay the petitioner a sum of Rs.2,38,363/- (Rupees two lakhs thirty eight thousand and three hundred and sixty three only) towards arrears of pay due to the petitioner as Purchase Officer of the 2nd respondent with interest at the rate of 12% per annum from January 2011 till payment.

2. According to the petitioner, he was employed as Purchase Officer in the second respondent Mill, which stopped functioning from June 2004. The petitioner was on the rolls of the second respondent Mill when it was closed. As per the orders of the Hon'ble Apex Court, the petitioner is entitled to receive salary upto September 2005. The first respondent informed the petitioner that his dues have been quantified as Rs.5,08,000/- from May 2004 to September 2005 and a Cheque dated 14.12.2010 was made ready. When the petitioner went to receive the same, only a cheque for Rs.2,69,637/- was given to him, being the amount due from May 2004 to January 2005. The petitioner made enquiries and he was informed that he was ceased to be an employee of second respondent from January 2005 and the amount due to him was calculated on that basis and cheque was issued. The same is totally false and contrary to the facts. The petitioner sent notice through his advocate dated 15.04.2011, seeking payment of balance amount. The first respondent sent a vague reply stating that cheque for Rs.5,08,000/- was prepared in haste and as the cases filed by some other employee are pending before the Hon'ble Apex Court, the claim of the petitioner could not be settled. The petitioner sent another notice through his advocate on 03.08.2011, stating that he was in service till the Mill was shut down and he has not submitted his resignation and he was paid salary till April 2004. The first respondent sent a reply dated 18.08.2011, stating that he has received information/objection to the effect that the petitioner left the service with effect from 01.01.2005 and therefore the earlier cheque dated 14.12.2010 for Rs.5,08,000/- was cancelled and a new cheque was issued and the same has been accepted by the petitioner. The first respondent failed to look into the files to verify the service of the petitioner. The first respondent has erred in acting on the information/objection without verifying the records and has failed to consider the pay slips submitted by the petitioner upto May 2004. On the above averments, the petitioner has come out with the present Writ Petition.

3. The first respondent filed counter affidavit. Ms.G.Djearany, learned Government Advocate (Pondicherry) contended that the second respondent has furnished the information that petitioner has left the services of the second respondent with effect from 01.01.2005 and based on such information, the first respondent has settled the dues of the petitioner from May 2004 to January 2005. Originally the amount was calculated for payment of dues to the petitioner till 10.08.2005, based on the cut-off date fixed in W.A.No.1459 of 2010 dated 30.09.2010. Since the petitioner has left the services with effect from 01.01.2005, he is not entitled for retrenchment compensation and hence the cheque for a sum of Rs.5,08,912/- was cancelled and the petitioner was issued a

cheque dated 14.12.2010 for a sum of Rs.2,69,637/- and the same was informed to the petitioner by the letter dated 18.08.2011. Before computing the amount, an opportunity was given to the petitioner and after verification of the relevant documents with the orders passed by the Hon'ble Apex Court and this Court, amount was calculated and the cheque was issued. She further submitted that as per the order of the Hon'ble Apex Court and this Court, the compensation payable to the petitioner was calculated from 01.02.1977, the date on which he joined the services till 10.08.2005, based on the cut off-date fixed in W.A.No.1459 of 2010 dated 30.09.2010. The amount of compensation originally amounting to Rs.5,08,912/- included retrenchment compensation and Provident Fund contribution by the Management. The amount due to workmen including the petitioner were computed after affording adequate opportunity to the parties concerned and after verification of relevant records in accordance with orders of the Hon'ble Apex Court and this Court. Hence, the petitioner is not entitled to any other amounts after January 2005 and retrenchment compensation and prayed for dismissal of the Writ Petition.

4.The second respondent has not filed counter. The learned counsel appearing for the second respondent contended that the petitioner has left the service of the second respondent with effect from 01.01.2005 and therefore he is entitled to amounts only up to January 2005. The claim of the petitioner that he is entitled to amounts up to September 2005 is without merits. The cheque for Rs.5,08,912/- dated 14.12.2010 was prepared without properly verifying the records by the first respondent. When the mistake was pointed out by the second respondent, the first respondent has prepared a fresh cheque for the correct amount and issued the same to the petitioner. The petitioner was not in service after January 2005 and hence he is not entitled for any amounts after January 2005 and retrenchment compensation and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner as well as the second respondent and the learned Government Advocate (Pondicherry) appearing for the first respondent and perused the entire materials on record.

6.From the materials available on record, it is seen that as per the orders of the Hon'ble Apex Court and this Court, the workers are entitled to compensation calculated from the date of joining till 10.08.2005. Originally the amounts payable to the petitioner was calculated from 01.02.1977 to 10.08.2005, which includes retrenchment compensation of Rs.1,55,619/- and Provident Fund contribution by the Management of Rs.1,812/-. Subsequently, the first respondent recalculated the amounts payable to the petitioner based on the alleged objection from

the second respondent and paid only a sum of Rs.2,69,637/-, holding that petitioner is not entitled to retrenchment compensation and Provident Fund contribution of Rs.1,812/-. The respondents have not produced any records to show that petitioner left the services of the second respondent with effect from 01.01.2005. The first respondent also not produced the objection received from the second respondent. Without there being any acceptable evidence, the first respondent held that petitioner is not entitled to retrenchment compensation and Provident Fund contribution by the Management. The petitioner has stated that he did not resign from the service and he worked till closure of the Mill. In view of the same, the petitioner is entitled to compensation as per the orders of the Hon'ble Apex Court and this Court as if he was in service till 10.08.2005 and he is entitled to full compensation including retrenchment compensation and Provident Fund compensation of Rs.1,812/-.

7. For the above reason, the communication of the first respondent dated 18.08.2011 is quashed and this Writ Petition is allowed. The first respondent is directed to pay the balance amount of Rs.2,38,363/- together with interest to the petitioner as per the original calculation, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

krk

To

1. The Commissioner of Labour,
Government of Pondicherry,
Pondicherry.

+1 cc to M/s.R.Meenal, Advocate, S.R.No.64821

+1 cc to M/s.Gupta & Ravi, Advocate, S.R.No.65165

+1 cc to the Government Pleader for Pondicherry, S.R.No.64790

W.P.No.638 of 2012

RR(CO)
SSM(16/09/2019)