IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.18165 of 2009

M.Mohamed Junaithu ...Petitioner

vs.

1.Government of Tamil Nadu,
Represented by Principal Secretary to
Government Micro, Small and Medium Enterprises Department,
Secretariat, Chennai-600 009.

2.Industries Commissioner and Director of
Industries and Commerce,
Chepauk, Chennai-600 005. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Letter No.9019/EI 2/06-10 dated 31.12.2008 issued by the 1st respondent and quash the same and direct the respondents to refund a sum of Rs.80,944/- to the petitioner.

For Petitioner : M/s.B.V.Dhivyadharshini
For Mr.S.Namasivayam
For Respondents : Mr.K.Magesh
Spl.Govt. Pleader

O R D E R

The Writ Petition has been filed to quash the impugned Letter No.9019/EI 2/06-10 dated 31.12.2008 issued by the 1st respondent, by which the request of the petitioner for refund of the amount of Rs.80,944/- remitted by him towards pension contribution, while he was on employment abroad, was rejected. The petitioner also sought for a direction to the respondents to refund a sum of Rs.80,944/- to him.

2. It is the case of the petitioner that he joined as Junior Chemist in the Chemical Testing and Analytical Laboratory, Guindy, Chennai and thereafter, promoted as Chemist. On

14.07.1999, he was given No Objection by the Government to take up employment abroad for a period of three years by granting leave without pay and allowances. It is the further case of the petitioner that in the said Government Order, it was inter alia prescribed that he should pay appropriate pension contribution and other contributions, if the foreigner employer does not pay the same to the Accountant General from time to time with appropriate interest for belated payments. It is also the case of the petitioner that his leave for employment abroad was extended till 24.07.2004 and on his return, he was posted at Thoothukudi and subsequently, the petitioner, on his resignation, was relieved from service on 15.10.2004. However, his contribution towards pension for the period from 20.07.1999 to 31.03.2004, amounting to Rs.80,496/- as confirmed by the Accountant General was rejected by the 1st respondent, stating that there is no provision available for refund of the said amount. The petitioner, referring to Fundamental Rule 120, has reiterated his claim and sought for refund of the amount.

3. In the counter, the respondents have stated that though the petitioner was sanctioned leave for years till 19.07.2002 for employment abroad and was thereafter extended upto 19.07.2004, it was clearly mentioned in the order of extension dated 19.12.2002 that the leave period will not be construed as a break in service and it will not be counted for service benefits, such as increment, pay, etc., and if the contribution towards pension is paid by the foreign employer or employee, such period will be counted for pension. It was also stated in the counted that FR 120 is applicable only to those Government Servants working on deputation in other State Government Undertakings / Other Governments on terms and conditions fixed by the Government and not to the Government Employees getting employment in a Private Establishment. The respondents also referred to Rule 41 of the General Rules for the Tamil Nadu State and Subordinate Services to contend that there is no provision in the Pension Rules for refund of pension contribution made by the petitioner. It was prayed that since there is no arbitrariness in the order issued by the 1st respondent, the Writ Petition is liable to be dismissed.

4. Learned counsel for the petitioner has submitted that the impugned letter of refusal of refund is highly unsustainable on the ground that it was issued without application of mind and there is no bar for the respondents under any provision of the Act for return of the amount made towards pension contribution. The respondents, having allowed the petitioner to go on leave for employment abroad, on fixation of the amount from time to time towards pension contribution to be paid to the Accountant

General, cannot refuse to refund the amount and denial of the respondents to refund the sum on return of the petitioner, is arbitrary in nature.

5. Learned Special Government Pleader contended that the impugned Government Letter is based on the rules and norms in existence and in the absence of any provisions to refund the amount, the petitioner, as a matter of right, cannot demand for such refund and therefore, the letter of the 1st respondent is perfectly valid and needs no interference by this Court.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. The facts of the case reveals that the petitioner was appointed as Junior Chemist in the year 1985 and thereafter, became as Chemist. Subsequent thereto, he, after obtaining prior permission from the Government, had gone for foreign service and returned to India on expiry of the contract. It is true that in terms of Rule 41 of the General Rules for the Tamil Nadu State and Subordinate Services, the petitioner shall, not only forfeit the entire services, which includes the monetary benefits, but also the services rendered earlier prior to the date of resignation. At the same time, it does not mean that the contribution made by the petitioner from his own hand / pocket should be retained and the respondents cannot contend that even the said contribution made by the employee from his own hand, cannot be refunded, as it would amount to punishment for resignation from services. The amount of contribution made by the petitioner cannot, at any stretch of imagination, be treated as service benefits and the amount got accumulated on account of remittance made by the petitioner as a precondition of the Government to work abroad and therefore, the respondents, on return of the petitioner to India, cannot refuse to pay back the amount, as there is no rule for retaining the contribution made by the petitioner as stated by the petitioner and on that score, the impugned Letter dated 31.12.2008 is liable to be set aside.

8. In fine, the Writ Petition is allowed and the impugned Letter No.9019/EI.2/06-10 of the 1st respondent dated 31.12.2008 is set aside. The amount so contributed by the petitioner shall be returned to him within a period of two months from the date of receipt of a copy of this order, failing which, the amount will carry interest at the rate of 12% p.a. and the interest portion shall be recoverable from the Officer concerned, who is responsible to refund the amount to the petitioner. If the

amount is not paid within the time stated supra, the respondents herein shall not draw their monthly salary from January, 2021, till the amount is actually disbursed to the petitioner. The Special Government Pleader shall personally handover a copy of this order to the respondents herein. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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TO

1.Government of Tamil Nadu,
Represented by Principal Secretary to
Government Micro, Small and Medium Enterprises Department,
Secretariat, Chennai-600 009.

2.Industries Commissioner and Director of
Industries and Commerce,
Chepauk, Chennai-600 005.

+1cc to Government Pleader, SR.NO. 25205
+1cc to Mr.S.Namasivayam,SR.NO.25031

W.P.No.18165 of 2009

SAI(CO)
KKV/13/10/2020