IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.07.2020

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 18921 OF 2013

A.Chandrasekaran .. Petitioner

- Vs -

1. The Secretary to government
Municipal Administration and
Water Supply Department
Fort St. George, Chennai 600 009.

2. The Director
Local Fund Audit
4th Floor, Kuralagam
Chennai 600 108.

3. The Commissioner of Municipal Administration
6th Floor, Ezhilagam
Chepauk, Chennai 600 005.

4. The Commissioner
Kanchipuram Municipal Office
Kanchipuram. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating on the file of the 2nd respondent in connection with the order in Mu.Mu. NO.8351 Na. O.Sa.(2) 2013 dated 01.04.2013 and quash the same and direct the 2nd respondent to pay all pensionary benefits to the petitioner from the date of retirement.

For Petitioner : Mr. J.Shanmugasundarababu

For Respondents: Mr. A.N.Thambidurai, Spl. GP

ORDER

It is the case of the petitioner that he was appointed as Helper in Tamil Nadu Steels Ltd. in the year 1973. The said company was closed by issuance of G.O. Ms. No.222 dated 16.6.98 and by a subsequent G.O. Ms. No.524 dated 21.8.1998, the employees of erstwhile Tamil Nadu Steels were absorbed in other public sector undertakings including Transport Corporation and local bodies.

2. Pursuant to the above absorption, the petitioner was absorbed as Junior Assistant in Kanchipuram Municipal Office vide order dated 26.2.99 and retired from the said post in the year 31.7.08. The petitioner has put in 9 years and 5 months in Kanchipuram Municipal Office and the qualifying service for getting pensionary benefits is 10 years, and the petitioner fell short by 6 months and 26 days. Prior to his retirement, the petitioner addressed representations to the 1st and 2nd respondents and requested them to pass orders for getting pensionary benefits. Since no orders were forthcoming, the petitioner filed W.P. No.11215 of 2004 for a direction to calculate half of the service rendered by the petitioner in the erstwhile Tamil Nadu Steels for the purpose of calculating the pensionable service. This Court, by order dated 3.7.12 directed the respondents to calculate half of the service rendered in the non-pensionable establishment along with the service rendered in pensionable establishment for the purpose of pensionary benefits.

3. Pursuant to the said order, the 3rd respondent passed an order on 11.9.12 for calculating half of the service renderedin non-pensionable establishment for the purpose of arriving at the pensionable service.

4. Whileso, the pension papers sent vide P.P.O. No.20683/M to the 2nd respondent were stalled on the ground that pension cannot be given to the petitioner unless he deposits the gratuity amount received from Tamil Nadu Steels Ltd., to which the petitioner agreed and had deposited the gratuity amount, which has been acknowledged by the 4th respondent. However, the 2nd respondent by order dated 1.4.13, directed that unless the petitioner deposits the closure compensation and gratuity amount received from Tamil Nadu Steels, pensionary benefits cannot be settled to the petitioner.

5. It is the further case of the petitioner that closure compensation was paid by the Government by issuance of G.O. Ms. No.222 and later vide G.O. Ms. No524, the petitioner was absorbed in the 4th respondent, Municipal Office. Therefore, the closure compensation having been paid by the Government, it is not open to the Pension Paying Authority to ask the petitioner

to pay back the closure compensation.

6. The payment of closure compensation was challenged before this Court and this Court upheld the closure compensation paid to the employees of Tamil Nadu Steels in W.P. No.5002/99 and, therefore, the petitioner is entitled to retain the closure compensation. However, the petitioner is ready to deposit the gratuity and the 4th respondent is willing to accept the said deposit. However, no steps have been taken to release the pensionary benefits to the petitioner till date, and, hence, the petitioner is constrained to file the present petition.

7. Learned counsel appearing for the petitioner submits that the petitioner submits that the petitioner is ready to deposit the gratuity amount received from Tamil Nadu Steels and the closure compensation paid to the petitioner cannot be sought to be refunded, as this Court has settled the legality of the said compensation paid to the petitioner.

8. On the above contention/submission, this Court heard the learned Special Government Pleader appearing for the respondent who does not dispute the facts advanced by the learned counsel for the petitioner. This Court also perused the materials available on record.

9. The facts are not in dispute so also the payments made to the petitioner. Equally it is not in dispute that the legality of the closure compensation paid to the employees have been decided in favour of the petitioner by this Court in W.P. No.5002/99. Therefore, in such a backdrop, it is not open to the Pension Paying Authority to direct the petitioner to refund the closure compensation received by him. But the Pension Paying Authority is well within its rights to direct the petitioner to deposit the gratuity amount received by the petitioner from Tamil Nadu Steels Ltd. Equally, it is submitted by the petitioner that in pursuance to the said order of the Pension Paying Authority, the petitioner is willing and ready to deposit the gratuity amount received.

10. In view of the above facts and circumstances of the case, without going into the merits of the issue raised in this writ petition, this Court while restrains the 2nd respondent from insisting on refund of closure compensation from the petitioner, however, directs the petitioner to refund the gratuity amount received from Tamil Nadu Steels Ltd., and on such deposit being made by the petitioner, the 2nd respondent is directed to release the pension amount within a period of three months from the date of deposit of the gratuity amount to the credit of the 4th respondent.

12. This writ petition is allowed with the aforesaid observations and directions. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

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RSV(CO)
GS(31/08/2020)