IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

W.P.No.5366 of 2020

V.Paramasivam ..Petitioner

-Vs-

The Management MRF Limited
T.H.Road, Thiruvottiyur
Chennai. ..Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari calling for the records pertaining to the order dated 25.06.2019 passed in C.P.No.262 of 2015 on the file of the II Additional Labour Court, Chennai, quash the same, consequently direct the respondent to pay the retirement relief fund of Rs.70,000/- and Social Welfare Fund of Rs.10,000/- respectively to the petitioner with interest.

For Petitioner : Mr.C.D.Sugumar
For Respondent : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.,

O R D E R

The prayer sought for herein is for a writ of Certiorarified Mandamus to call for the records pertaining to the order passed in C.P.No.262 of 2015 on the file of the II Additional Labour Court, Chennai, quash the same, consequently direct the respondent to pay the Retirement Relief Fund of Rs.70,000/- and Social Welfare Fund of Rs.10,000/- respectively to the petitioner with interest.



2. The case of the petitioner is that, he was a workman under the respondent Management and had been dismissed / terminated from service on 15.01.1997, as against which he approached the Conciliation Officer, where the issue seems to have ended in failure. Therefore, he raised an industrial dispute before the Labour Court under Section 2(A)(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act').

3. The labour Court, by an award dated 11.07.2012, though has found that the dismissal made against the petitioner by the respondent Management was faulty and unlawful, instead of reinstatement of the petitioner, awarded a lump sum compensation of Rs.2,00,000/-. The reason for not reinstating the petitioner is that, by the time the labour Court passed the award in the year 2012, the petitioner had reached the age of superannuation in the year 2010 itself and therefore the said order was passed directing the Management to pay lump sum compensation of Rs.2,00,000/- to the workman, in lieu of reinstatement.

4. Aggrieved over the said award passed by the labour Court, it seems that, the petitioner approached this Court by way of a writ petition and thereafter writ appeal and ultimately he has taken up the matter to the Honourable Supreme Court of India. However, in all his attempts he became unsuccessful. Therefore, the award passed by the labour Court dated 11.07.2012 has become final and pursuant to which, the said lump sum compensation also had been paid to the petitioner.

5. In that circumstances, the petitioner approached the labour Court once again by filing a Computation Petition under Section 33(c)(2) of the Industrial Disputes Act, 1947. This time the case of the petitioner is that, on 07.07.2009 there has been a settlement under Section 12(3) of the Act between the respondent Management and the Employees, wherein there has been an agreement between the Management and the Employees Union among other things, two aspects viz., one is Retirement Relief Fund and another one is Social Welfare Fund.

6. In this context, it is the case of the petitioner that, as per the said two funds which has been created for the welfare of the employees of the respondent company, the petitioner is also being one of the employee is entitled to get the benefits under the said funds and accordingly he sought for Rs.70,000/- towards Retirement Relief Fund and Rs.10,000/- towards Social Welfare Fund, totaling to Rs.80,000/- and for the said purpose only a petition under Section 33(c)(2) was filed before the Labour Court. The said computation petition has now been decided in the impugned order dated 25.06.2019, where the labour Court has rejected the claim of the petitioner stating that, the petitioner is not entitled to get any relief other than the lump sum compensation that was ordered by the labour Court, which has been received by the petitioner. More over the terms of the 12 (3) settlement entered into between the employees union and the management dated 07.07.2009, strictly if it is taken into account, that would be applicable only to the permanent workmen and permanent hourly rated workmen alone and whatever the benefits which have been quoted under the 12(3) settlement since

had been merged with the lump sum compensation ordered by the labour Court towards the petitioner, which he has received, no further financial benefit is accrued on the petitioner as per the claim made in the computation petition. Accordingly, the claim made by the petitioner deserves to be rejected and the labour Court has rejected the claim of the petitioner through the impugned order.

7. Heard Mr.C.D.Sugumar, learned counsel for the petitioner, who would submit that, the labour Court in the earlier award made in I.D.No.616 of 1997 by award dated 11.07.2002 has found that, the termination or dismissal of the petitioner dated 15.01.1997 was unlawful one and once the labour Court having come to the conclusion that the dismissal is unlawful, the natural corollary would be to reinstate the petitioner. Since the petitioner by that time had already reached superannuation by 16.04.2010, when lump sum compensation was awarded, it should only be construed that the petitioner had been in service throughout ie., from 1997 till 16.04.2010 viz., the date of superannuation and if it is so construed, whatever benefits accrued to the employee who had been continuously in service till his superannuation including the two funds ie., Retirement Relief Fund and Social Welfare Fund, would also have accrued to the petitioner and therefore he is entitled to get the benefits. However, without considering these aspects in proper perspective, the labour Court had rejected the plea raised by the petitioner and therefore the impugned order is unsustainable, he contended.

8. Per contra, learned counsel for the respondent Management would contend that, no doubt there has been a 12(3) settlement dated 07.07.2009 under which two schemes have been envisaged. It has been clearly spelt out in the schemes as to how the funds would accrue to each of the employee as per the 12(3) settlement, wherein it is provided that both the employer as well as the employee should make contribution to the funds and then only the employee would be entitled to get the benefit. Moreover, only the permanent workmen and permanent hourly rated workmen alone are entitled to get the benefits and admittedly the petitioner has not been in service effectively for the purpose of those two schemes and he had not made any contribution. Though the labour Court found that the termination or dismissal made against him was unlawful, the labour Court had awarded a lump sum compensation of Rs.2,00,000/- which had also been paid and therefore the said lump sum compensation is the complete financial benefit for which the petitioner is entitled to from the employer and since the complete financial benefit has been paid to the petitioner, no further financial benefit can be expected from the employer including the funds under the two schemes referred to under the

12(3) settlement. Therefore, this aspect since has been considered in proper perspective by the labour Court, no interference is required by this Court and the learned counsel for the respondent Management seeks the dismissal of this writ petition.

9. I have considered the rival submissions made by the learned counsel for the parties and have perused the materials placed on record.

10. Now the only issue is whether the petitioner is entitled to get any benefit under the two schemes viz., Retirement Relief Fund and Social Welfare Fund. In order to appreciate the said Schemes, the relevant portion of the 12(3) settlement is extracted hereunder.

> "14. RETIREMENT RELIEF FUND:-
>
> It is agreed to that each permanent hourly rated workman will contribute Rs.50/- (Rupees Fifty only) per month to be deducted from his wages and the Management agrees to give matching contribution every month and a "Retirement Relief Fund" will be created. The fund will be administered by a committee consisting of equal representatives of workmen and management, totaling four.
>
> A sum of Rs.70,000/- (Rupees Seventy Thousand only) will be paid only to permanent workmen, who are retiring from the service as Retirement Relief Fund, this will not be paid to workmen who are terminated/resigned/dismissed etc.
>
> The above amount will be paid subject to availability of funds only.
>
> As enumerated in the settlement dated 12.05.2004, each permanent workman will contribute Rs.150/- per month and management will give a matching contribution towards the fund.
>
> As such requirement of the retirement relief fund for this agreement period is less and as requested by the union it is mutually agreed by both the parties that the contribution of Rs.50/- per month per workman and equal matching contribution of the Management will be sufficient to meet the fund required for enhanced retirement relief fund. Hence, the balance of Rs.100/-(Rs.150/- - Rs.50/- =Rs.100/-) set aside by the management towards the fund will be temporarily paid to workmen as Temporary allowance subject to the contribution of Rs.50/- per month towards this scheme by the permanent workmen.

Hence the contribution towards the scheme will be Rs.50/- per month per workman and the management will give a matching contribution towards this fund. This will be effective during the period of this settlement.

In case of inadequately of retirement relief fund, the Temporary allowance will be withdrawn and the amount will be used for retirement relief fund.

15. SOCIAL WELFARE FUND:

Each permanent hourly rated workman will contribute Rs.10/- (Rupees Ten only) per month to be deducted from his wages towards Welfare Fund and the Management agrees to give matching contribution every month. The benefits to workmen out of this fund will be discussed mutually and implemented.

The fund will be administered by a committee consisting of equal representative of workmen and management, totaling four.

As enumerated in the settlement dated 12.05.2004, each permanent workman will contribute Rs.30/- per month and management will give a matching contribution towards the fund.

As such requirement of the Social welfare fund for this agreement period is less and as requested by the union it is mutually agreed by both the parties that the contribution of Rs.10/- per month per workman and equal matching contribution of the Management will be sufficient to meet the fund required for Social welfare fund. Hence, the balance of Rs.20/- (Rs.30/- - Rs.10/- = Rs.20/-) set aside by the management towards the fund will be temporarily paid to workmen as Temporary allowance subject to the contribution of Rs.10/- per month towards this scheme by the permanent workmen.

Hence the contribution towards the scheme will be Rs.10/- per month per workman and the management will give a matching contribution towards this fund. This will be effective till the operation of the settlement.

In case of inadequately of Social Welfare fund, the Temporary allowance will be withdrawn and the amount will be used for Social Welfare fund.

Hence the contribution towards the scheme will be Rs.10/- per month per workman and the management will give the matching contribution towards this fund. This will be effective during the period of this settlement."

11. On a reading of the salient features of the above two Schemes, it is made clear that, every month there must be

contribution from the employee and equal amount would be contributed (or) matching contribution would be made by the employer. In both the Schemes, this is the condition imposed and only those who accept this condition and made contributions every month alone would be eligible to get the funds.

12. That apart, insofar as the petitioner is concerned, admittedly he was dismissed from service in the year 1997 and though he raised an industrial dispute in the year 1997, it was decided only in the year 2012, before which, in the year 2010 he attained superannuation. Therefore, even though the labour Court found the dismissal / termination made against the petitioner to be illegal or unlawful, it ordered a lump sum compensation of Rs.2,00,000/-. The lump sum compensation was ordered by taking into account the service period in which the employee is out of service and after calculating the financial benefits earned by him had he been in service during that relevant period. The lump sump compensation calculation would also take into account that during the relevant period the employee was not in service and no work has been done by the employee. Therefore, whatever the amount paid by way of backwages or by way of lump sum compensation would be paid assuming that the employee was working with the employer during the relevant period. Only in that context, the labour Court has ordered the lump sum compensation to the petitioner.

13. Not satisfied with the same, the petitioner has filed a writ petition followed by an intra court appeal and ultimately has gone upto the Supreme Court of India. All these attempts ended in failure and therefore he has become unsuccessful.

14. Therefore, the award passed by the labour Court has become final, against which no further claim can be made by relying on the 12(3) settlement dated 07.07.2009.

15. Assuming that the petitioner should also be construed as an employee who had been in service from 1997 to 2010 and therefore what are all the benefits financially accrued on the petitioner, he shall be entitled to get the benefits and in that line the learned counsel for the petitioner also urged to contend. This Court feels that absolutely there is no quarrel on that principle. However, in the case in hand, there has been a lump sum compensation already awarded by the labour Court which has been confirmed upto the Supreme Court. That apart, first of all under the two Schemes, the petitioner is not entitled to claim anything since there was no contribution from his side. Secondly, as has been rightly pointed out by the labour Court in the order impugned at Para 7 that the lump sum compensation awarded by the labour Court includes the financial benefits accrued during the relevant period. The relevant portion of Para 7 of the impugned order is extracted hereunder.

" 7. So it is clearly stated that the benefit under Retirement Relief Fund and Social Welfare Fund will be granted only to employees who retirement without stigma. If the employees are reinstated through court order, there is chance for claiming the benefits under the settlement arrived between petitioner and the management. The settlement was signed by the union on behalf of all the employees. Now petitioner claim the benefit amount out of the agreed clause for his benefit which cannot be permitted. Hence this court come to conclusion that petitioner was granted with compensation of Rs.2,00,000/- on the whole considering and including all the benefits and so claim of the petitioner is unsustainable and as such issue 1 and 2 answered."

16. This Court accepts the said reason given by the labour Court for rejecting the claim of the petitioner because he has not contributed anything and moreover since he has received the lump sum compensation in lieu of reinstatement, no further financial benefits since has been accrued on the petitioner, he is not entitled to get any benefit as he claimed before the labour Court in the Computation Petition. Therefore, the said plea since has been considered in proper perspective, it has been rightly rejected by the labour Court through the impugned order. Hence, this Court feels that it does not require any interference.

17. For all these reasons, the writ petition fails and the same is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KST
To

The Presiding Officer, Labour Court, Salem.
+1 CC to Mr.T.S. Gopalan & Co, Advocate sr 41663.

W.P.No.5366 of 2020

PPA(CO)
SP(05/02/2021)