IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3758 of 2011
and M.P.No.1 of 2011

A.Chellaiah ... Petitioner

vs.

1. The Tamil Nadu Khadi and Village Industries Board,
Rep. by its Chief Executive Officer,
Kuralagam, Chennai - 600 001.

2. The Assistant Director,
Khadi and Village Industries,
Thirunelveli - 2. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order No.707/07/V7 dated 29.09.2009 issued by the 2nd respondent, quash the same to the extent it grants permanency to the petitioner with effect from 14.11.2008 and consequently direct the respondents to grant permanency with effect from the year 1982 or 1983, with all arrears of pay, attendant benefits with penal interest and grant of pension with all pensionary benefits.

(Prayer amended as per the order of this Court dated 31.07.2020)

For Petitioner : Mrs.S.Meenakshi

For Respondents : Mr.S.K.Bose

ORDER

The present Writ Petition is filed seeking to quash the order dated 29.09.2009 passed by the 2nd Respondent vide order No.707/07/V7, to the extent it grants permanency to the petitioner with effect from 14.11.2008 and for a consequential direction to the respondents to grant permanency with effect from the year 1982 or 1983, with all arrears of pay, attendant benefits with penal interest and grant of pension with all pensionary benefits.

2. According to the petitioner, he joined the services of the 2nd respondent on 01.04.1980 as a daily-rated employee. Since his request for permanent status was not considered, he

moved the Authority claiming permanent status and the Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (in short '1981 Act'), by an order dated 25.11.1997, directed the respondents to grant permanent status to the petitioner on and from the date of his completion of 480 days of service in 24 calender months. As per the said order, the Petitioner completed 480 days of service sometime in the second half of 1983. Khadi Board challenged the said order dated 25.11.1997 passed by the Authority, in W.P.No.3530 of 1999 and obtained an order of stay of operation of the said order. On 14.11.2008, this Court dismissed the said Writ Petition, confirming the order dated 25.11.1997 passed by the Authority. On perusal of the order of the Authority dated 25.11.1997, it appears that the Authority had granted permanent status to the petitioner on account of non-production of required documents by the Employer, as contemplated under Rule 6 of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Rules, 1981.

3. In spite of several requests made by the petitioner, the Respondents did not implement the order of the Authority. Hence, the petitioner filed Contempt Petition No.775 of 2009 before this Court and sought to implement the order of this Court. The said Contempt Petition was dismissed by an order dated 17.06.2010 with a direction to approach the concerned Authority for execution of the order dated 25.11.1997.

4. Thereafter, the 2nd respondent passed an order dated 29.09.2009 granting permanent status to the petitioner under the 1981 Act, w.e.f. 14.11.2008. The grievance of the petitioner is that as he had attained the age of superannuation, and having had the benefit of the order of the Authority under the 1981 Act, his services should have been regularized as early as in 1983 and granted all monetary benefits including pension. It is his further grievance that the respondent/Board has not given the minimum wages prescribed and not granted wages for all the days, but restricted monetary benefits to the working days alone. According to the petitioner, it is not the fault of the employee in not discharging work, but it is purely a fault on the part of the employer in not granting employment. Hence, it is submitted that the petitioner is entitled to all the benefits as sought for in the Writ Petition as per the amended prayer.

5. In the counter filed by the respondents, it is stated that even though the petitioner's service has been regularized in 2008, subsequently, the petitioner's benefits from 1983 have already been granted and after adjusting the amount paid to the petitioner, remaining amount has been paid to the employee, viz. the petitioner. It is further stated that the petitioner was fixed with the time scale of pay from the date of his completion of 480 days in the Board and he was eligible for the due amount of Rs.4,86,035/- towards pay fixation on time scale during the period from 1982-83 to 2011-12. After

adjusting the wages drawn by him, he was eligible for arrears of Rs.30,122/-, whereas, the contribution towards EPF and ESI for the period from 1982-83 to 2011-12 is Rs.66,830/-. In the event, the petitioner was eligible for an arrear amount of Rs.30,122/- for the period from 1982-83 to 2011-12, a sum of Rs.66,830/- towards Employees' EPF and ESI contribution could not be recovered from him.

6. According to the respondents, the petitioner will be eligible for EPF contributory pension, since he had already completed ten years of service and that he has been sanctioned with up to date revision in scale of pay, increased Dearness Allowance, etc and he has been given all the benefits applicable to the employees of permanent status. It is further stated that the arrears payable to the petitioner towards fixation of regular time scale of pay from the date of completion of 480 days till date was also paid to the petitioner and he is now enjoying the regular time scale of pay. Denying the statement of the petitioner that he is still receiving salary by signing the voucher and that his salary is calculated at Rs.130/- per day, as false, the respondents have stated that the petitioner is paid Rs.12,651/- towards salary and he received the said amount for the month of December 2018 also.

Thus, according to the respondents, as the petitioner was paid the arrears from the date of his completion of 480 days and is now enjoying the regular time scale of pay, higher wages, allowances, etc., the writ petition is liable to be dismissed.

7. Heard the learned counsel for the parties and perused the material documents available on record.

8. It is not in dispute that the petitioner joined the services of the respondent/Board on 01.04.1980 and was granted the benefit of permanent status vide order dated 25.11.1997 passed by the Authority and that the said order has been confirmed by the learned Single Judge of this Court. The only grievance of the petitioner is that minimum wages have not been paid to him.

9. A glance at the Page No.27 of the typed set of papers makes it clear that the wages, which prevailed as on that date has been paid to the employee and the petitioner cannot seek for higher emoluments, if the emoluments are paid equivalent to the permanent employee on that date of confirmation. If really there was a dispute, this Court would have relegated the matter to the Labour Court for computation of the disputed amount and would not have entertained the Writ Petition itself. Further, the settlement would make it very clear that benefits for the number of working days has been specified, which alone is the disputed question of fact. Even that cannot be the disputed question of fact, more so, when the Authority under the 1981 Act has granted permanent status, which has been confirmed by this Court and the petitioner

would be entitled to wages for all the working days and paid holidays, as if he was in service, in terms of Section 3 of the 1981 Act.

10. The number of days for which wages have been paid as could be seen is low that is not the wages and the total number of working days has not been taken into account for the purpose of computation of arriving at the wages payable. Since the employee's service has been regularized as early as in 1982, he is entitled to regular pension that was in existence on that date and not the contributory pension as contended by the respondents. If the petitioner was eligible for Contributory Pension on that date, it is not in dispute that that alone has got to be extended to him. But, it is highly doubtful whether there was Contributory Pension in existence in the year 1980, when the petitioner joined and his services have been confirmed in the year 1984. Hence, this Court is of the view that the petitioner is entitled to the relief sought for.

11. Accordingly, the Writ Petition is allowed and the impugned order dated 29.09.2009 is hereby set aside. The respondents are directed to grant permanency to the petitioner from 01.04.1982 and arrive at the arrears payable to him and after adjusting the amount already paid to him, the balance amount shall be paid to him. As the petitioner agrees to pay his contribution towards Provident Fund received, the amount can be adjusted from the arrears payable to him together with pension. The entire exercise shall be completed within four months from the date of receipt of a copy of this order.

12. It is needless to mention that since the order of the Authority has been confirmed for the second time, it is open to the petitioner to recourse to prosecution under the provisions of 1981 Act within the time stipulated under the said Act from the date of receipt of a copy of this order. It is open to the petitioner to file a complaint under 1981 Act and the prosecution shall be initiated against the Officials. There cannot be a delay, as the cause of action commences from the date of this order being made ready. The Government shall not sleep over the matter and bring the issue to a logical conclusion. Once criminal proceedings are initiated, the same shall be reflected in the Service Record of the officials. The Authority shall sanction prosecution, as previous sanction is required in terms of Section 6 of 1981 Act and any person can be appointed to prosecute a person so as to bring the issue to a logical end in the light of the judgment of the Apex Court in the case of Rajkumar Gupta vs. Lt. Governor, Delhi reported in 1997 (1) LLJ 994. Hence, the Government shall nominate an employee to pursue the matter, as he will be the better person to furnish evidence of the case through his Advocate and that there will be a literal logical conclusion. In case the Officer concerned is not going to implement the order, the Officer shall not be granted any promotion and terminal benefits. The Apex Court in the case of Tamil Nadu State Transport Corporation vs. Neethivilangan, Kumbakonam, reported

in (2001) 9 SCC 99 held that the Court is empowered to issue directions to implement the order of the Lower Forum.

13. It is made clear that since the salary is going to be paid and the deduction is going to take place while disbursing the amount, the contention of the respondents that Provident Fund Department will demand interest and take penal action, does not arise at all in this case. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar
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To:

1. The Chief Executive Officer,
The Tamil Nadu Kadhi and Village Industries Board,
Kuralagam, Chennai - 600 001.

2. The Assistant Director,
Khadi and Village Industries,
Thirunelveli - 2.

W.P.No.3758 of 2011

BP(CO)
GMY(29/09/2020)