

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.22516 of 2014

S.Natarajan

... Petitioner

vs.

1. The Government of Tamil Nadu,
rep. by the Principal Secretary,
Department of Industries,
Fort St. George,
Chennai 600 009.
2. The Chairman and Managing Director, IC,
Southern Structurals Ltd.,
Pattabiram,
Chennai 600 072. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the 2nd Respondent to pay the balance compensation as per G.O.Ms.No.158, Finance (BPE) Department dated 13.05.2002 amounting to Rs.1,20,877/- along with recovery made in salary of a sum of Rs.20,000/- totalling a sum of Rs.1,40,877/- (Rupees One Lakh Forty Thousand Eight Hundred and Seventy Seven only) and interest at the rate of 10% on the gratuity amount of Rs.2,32,107/- which works out for a sum of Rs.23,210/- (Rupees Twenty Three Thousand Two Hundred and Ten only) from 30.11.2014 to 13.12.2005 applicable for a period of one year.

For Petitioner : Mr.R.Baskar
For 1st Respondent : Mr.S.Thangavel, Spl.G.P.,
For 2nd Respondent : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.,

ORDER

Petitioner has come up with the present Writ Petition seeking a direction to the Respondents to pay him the balance compensation as per G.O.Ms.No.158, Finance (BPE) Department dated 13.05.2002, amounting to Rs.1,20,877/- along with recovery made in salary of a sum of Rs.20,000/-, totalling a sum of Rs.1,40,877/- and interest at the rate of 10% on the gratuity amount of Rs.2,32,107/-, which works out for a sum of

Rs.23,210/- from 30.11.2014 to 13.12.2005 applicable for a period of one year.

2. According to the Petitioner, since 27.05.1972, he served in the 2nd Respondent Company, which is managed by the Government of Tamil Nadu, for more than three decades. He went on to state that, the 2nd Respondent introduced Voluntary Retirement Scheme (VRS) in their Company on 15.02.2001 and the Petitioner opted for VRS on 20.02.2001 in the first batch. It is his case that, when most of the employees who opted for VRS in the first batch, were allowed to retire on 16.02.2002, the Petitioner and some other senior Officers were retained, to resolve the pending issues of the Company with the assurance that, they would be relieved in the last batch. Accepting the said assurance, the Petitioner withdrew his offer for VRS on 03.06.2002 along with three other senior Officers and taking note of the same, the 2nd Respondent cancelled their VRS offer on 12.06.2002.

3. While so, on 02.01.2003, the 2nd Respondent again offered VRS to the last batch and the Petitioner submitted his request to relieve him under VRS on 26.02.2003. However, the Petitioner's request was withheld and others were relieved under Voluntary Retirement Scheme.

4. In respect of his grievance, the Petitioner made a representation to the Additional Secretary of Government of Tamil Nadu (Industries) on 17.09.2003; to the Special Secretary to Government of Tamil Nadu (Industries) on 27.01.2004 and also to the 1st Respondent herein on 16.04.2004, requesting their intervention to relieve him under Voluntary Retirement Scheme, on account of his financial exigencies. Thereafter, the Petitioner was relieved under the Voluntary Retirement Scheme only on 30.11.2004.

5. The grievance of the Petitioner is that, as per the relieving order, he should have received the entire terminal benefits except the compensation amount of Rs.1,29,780/- for the left over service and that, the gratuity amount of Rs.2,32,107/- ought to have been paid by the 2nd Respondent on 30.11.2004 itself, as per the provisions of the Payment of Gratuity Act.

6. As there was no response, the Petitioner made an Application under Section 1(4) of the Payment of Gratuity Act, 1972 on 19.09.2005 to the 1st Respondent, for release of the gratuity amount of Rs.2,32,107/-. In response to his Application, the Petitioner received a sum of Rs.1,25,780/- on 18.10.2005 and a sum of Rs.2,36,230/- on 13.12.2005, from the 2nd Respondent.

7. Pointing out to G.O.Ms.No.158/2002, dated 13.05.2002, the Petitioner has stated that, as per clause 7(iii) of the said Government Order, at least 90% should opt for Voluntary Retirement Scheme within one month from the offer or else, employees would be eligible for only retrenchment compensation. Going by the said Government Order, it is the case of the Petitioner that, since he was not allowed to retire within one month of opting VRS, under clause 7(i) and 7(ii) of the said Government Order, he is eligible for compensation of a sum of Rs.2,50,000/- and Gratuity of a sum of Rs.2,32,107/-, in toto, a sum of Rs.4,82,107/-. According to the Petitioner, he has received only a sum of Rs.3,61,230/- (Rs.1,25,000/- + Rs.2,36,230/-) after due delay of 1 ½ years and that, the balance amount of Rs.1,20,877/- towards compensation is yet to be paid.

8. It is further stated by the Petitioner that, after relieving him under the VRS Scheme, he had been kept under retainership in the 2nd Respondent's Company for a certain period and a sum of Rs.15,000/- was fixed as retainer fee. However, for October 2010, his retainer fee was reduced to Rs.8,000/-, based on G.O.Ms.No.137 Industries (MID 1 Department), dated 27.09.2010. Hence, the Petitioner made a representation to the 2nd Respondent for restoration of retainer fee earlier fixed by the 2nd Respondent. As there was no response from the 2nd Respondent, the Petitioner discontinued himself from retainership on 30.04.2011. It is stated by the Petitioner that, the loss suffered by him due to reduction in retainer fee comes to Rs.70,000/- for a period of 10 months. As there was no response to the representations made by the Petitioner as regards payment of balance compensation, he has come up with this Writ Petition with the aforesaid relief.

9. Today, when the matter was taken up for hearing, learned counsel appearing for the 2nd Respondent submitted that, the Application made by the Petitioner seeking to relieve him under Voluntary Retirement Scheme was originally withdrawn by him and he was relieved from service only on 30.11.2004. Thereafter, he continued as Legal Adviser to the 2nd Respondent/Company and parted the Company in the year 2011. Had the Petitioner really been aggrieved as regards payment of compensation, he should have filed the Writ Petition immediately and not after a lapse of three years. Hence, according to the learned counsel, the present Writ Petition is hit by laches and is liable to be dismissed.

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

11. Admittedly, the Petitioner opted for Voluntary Retirement Scheme on 20.02.2001 in the first batch itself. As

the 2nd Respondent Company retained the Petitioner and some other Officers to resolve the pending issues of their Company, the Petitioner was relieved under the said Scheme only on 30.11.2004. The Petitioner himself has admitted that, he has received a sum of Rs.1,25,780/- on 18.10.2005 towards VRS compensation and a sum of Rs.2,36,230/- on 13.12.2005 towards Gratuity, from the 2nd Respondent, after being relieved under the Voluntary Retirement Scheme. Fact remains that, the Petitioner continued to serve the 2nd Respondent/Company as a Legal Adviser and he parted the Company only in the year 2011.

12. Clause 7(iii) of G.O.Ms.No.158/2002, dated 13.05.2002 reads that, "at least 90% should opt for Voluntary Retirement Scheme within one month from the offer or else, employees would be eligible for only retrenchment compensation. Those employees who do not opt for it would get only retrenchment compensation." It has to be noted that, the Petitioner was not relieved under Voluntary Retirement Scheme in the first batch itself. Indeed, he was relieved only on 30.11.2004 and he had even made a representation to the 1st Respondent herein on 16.04.2004, requesting his intervention to relieve him from the 2nd Respondent Company under Voluntary Retirement Scheme. Hence, the Petitioner claims that, he is eligible to receive balance compensation under the head 'retrenchment compensation'. Also, it is seen that, the retainer fee paid to the Petitioner has also been reduced from Rs.15,000/- to Rs.8,000/- per month.

13. In view of the above and having regard to the submissions made by the learned counsel on either side, this Court, without going into the merits of the case, directs the 1st Respondent herein to consider the Petitioner's representation as regards payment of balance compensation under the Voluntary Retirement Scheme, as per G.O.Ms.No.158, Finance (BPE) Department dated 13.05.2002 on merits and in accordance with law and pass appropriate orders regarding payment of balance compensation to the Petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.

14. The Writ Petition is allowed to the extent indicated above. There shall be no order as to costs.

Sd/-
Asst. Registrar

//True Copy//

Sub Asst. Registrar

abe/(jrs)

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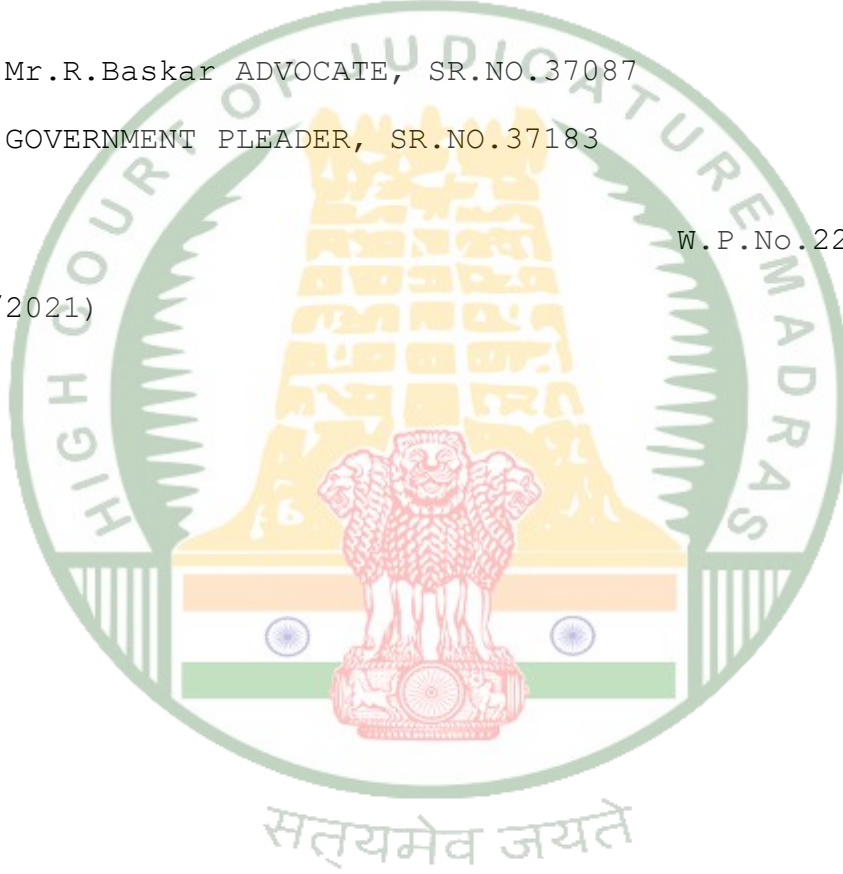
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Chennai 600 072.

+1 C.C.to Mr.R.Baskar ADVOCATE, SR.NO.37087

+1 C.C.to GOVERNMENT PLEADER, SR.NO.37183

W.P.No.22516 of 2014

NR(CO)
VC (19/01/2021)



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