IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 15.03.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.15214 of 2010

M.D.Manickavelu ... Petitioner

Vs.

1.The Secretary to Government,
Agriculture Department,
Fort St. George, Chennai - 9.

2.The Managing Director,
Tamil Nadu Agro Industries
Development Corporation Limited,
Agro House,
Industrial Estate,
Guindy, Chennai - 32. ... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents to pay the service benefits of retrenchment, compensation, ex-gratia payment, gratuity, duty salary, encashment of leave salary for 240 days, bonus for the years 2000-01 and 2001-02, increase of 2% D.A. benefit from 01.07.01 to 28.02.02, fifth pay commission arrears from 01.01.96 to 31.03.98 and interest and penal interest granted for the belated payment as per and penal interest granted for the belated payment as per G.O.No.81 Agriculture Department (AE II) dated 21.03.02 and all other benefits.

For Petitioner : Ms.Swathi Subramaniam
for Mr.R.Prem Narayan

For 1st Respondent : Mrs.K.Bhuvaneswari
Additional Government Pleader

For 2nd Respondent : Mr.C.Venkatesalu

ORDER

The prayer sought for herein is for a writ of mandamus to direct the respondents to pay the service benefits of retrenchment compensation, ex-gratia payment, gratuity, duty salary, encashment of leave salary for 240 days, bonus for the years 2000-01 and 2001-02, increase of 2% D.A. benefit from 01.07.01 to 28.02.02, fifth pay commission arrears from 01.01.96 to 31.03.98 and interest and penal interest payable for the belated payment as per G.O.No.81 Agriculture Department (AE II) dated 21.03.02 and all other benefits.

2.The petitioner was working at the second respondent Corporation viz., Tamil Nadu Agro Industries Development Corporation Limited as Junior Assistant. However, due to the heavy loss continuously registered by the second respondent Corporation, the Government had taken a policy decision to close down the second respondent Corporation, accordingly, the Government Orders were issued to close down the Corporation and also the Government Orders were issued to pay retrenchment compensation and other benefits to the retrenched employees who are numbering about 237 and the petitioner is one among them. Accordingly, the Corporation had been closed and all the 237 workmen including the petitioner were retrenched and as per the order passed by the Government in this regard, the retrenched employees including the petitioner were entitled to get retrenchment compensation as well as other benefits like ex-gratia payment, gratuity as well as surrender leave salary.

3.In this regard, based on the input supplied by the second respondent Corporation, the first respondent had come forward to issue a Government Order in G.O.Ms.No.81, Agriculture (AE.II) Department dated 21.03.2002, by which, a sum of Rs.926.08 lakhs was sanctioned for making the compensation and other payments like ex-gratia, gratuity and surrender leave salary to all 237 retrenched employees of the second respondent Corporation.

4.On receipt of the said amount of Rs.926.08 lakhs, the second respondent Corporation accordingly had calculated the amount payable to each of the employee including the petitioner under four heads mentioned in the G.O.Ms.No.81 and accordingly, the calculated amount has been disbursed to the employees including the petitioner.

5.However, not satisfied with the quantum of amount paid by the second respondent to the petitioner under the four heads, referred to above, as according to the petitioner, the amount under four heads would be doubled the amount of what has been actually settled now to the petitioner, he had sought for the actual amount payable under the four heads, which according to the petitioner, would be a sum of Rs.9 lakhs and more, instead of Rs.4 lakhs and odd now has been disbursed to the petitioner.

6.Therefore, for getting the said actual amount or enhanced amount as per the petitioner's calculation payable to the petitioner under the four heads, referred to above, the petitioner though made an attempt by way of representation, which were not considered and the said amount has not been paid, hence he has filed this present writ petition with the aforesaid prayer.

7.Heard Ms.Swathi Subramaniam, learned counsel appearing for the petitioner, who having reiterated the aforesaid facts would heavily rely upon G.O.Ms.No.81 referred to above and would contend that, for making the payment to all the employees including the petitioner under the four heads, the said amount of Rs.926.08 lakhs were sanctioned by the Government through the said G.O. Having receipt of the said amount, the second respondent Corporation ought to have calculated the correct quantum of amount under four heads and accordingly it should have been disbursed to each of the employees including the petitioner. However, the second respondent has given their own calculation in all the four heads and accordingly, they arrived at only 50% of the amount and they paid only the said amount, which is Rs.4,08,420/-. Whereas, according to the petitioner, the terminal benefits under four heads shall be Rs.9,70,663/-, for which, a calculation memo also has been filed and therefore, the remaining amount, for which the petitioner is entitled to, shall be directed to be paid to the petitioner, hence, the learned counsel seeks indulgence of this Court to issue a writ of mandamus as prayed for.

8.However, Mr.C.Venkatesalu, learned Standing Counsel appearing for the second respondent by relying upon the averments made in this regard, in the counter affidavit as well as the documents in support of the case, would contend that, under the four heads what is the eligible amount payable to the petitioner has been calculated and totally the said sum comes to Rs.4,08,420/- and not Rs.9,70,663/- as claimed by the petitioner and the said amount of Rs.4,08,420/- has already been disbursed by way of cheque or otherwise. Therefore, the entire sum payable to the petitioner since has been paid already, nothing more to be paid and therefore, the claim made by the petitioner is untenable, hence he seeks indulgence of this Court to reject this writ petition.

9.I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

10.In support of the claim, though the petitioner has filed a calculation stating that, totally a sum of Rs.9,70,663/- is the due under various heads, out of which, Rs.1,49,500 alone was paid, therefore, the remaining amount to be paid, the second respondent has made the following averment in the counter affidavit.

"5)With reference to the allegations in para 4 to 7 of the affidavit, it is submitted that the 2nd Respondent Corporation has fully settled the Terminal Benefits Payable to the petitioner at the time of his retrenchment from service on par with all such retrenched employees as per orders in force. The following are the details of Terminal Benefits were paid to the petitioner as per Industrial Disputes Act, 1947, Payment of Gratuity Act, 1971 and other Statutory Benefits as per orders in force.

1) Ex-Gratia eligible amount Rs.2,50,000/- Amount actually paid after imposing the restriction as per Government order which was meant for all such retrenched employees. Rs.1,49,500 /-	
2) Retrenchment compensation	Rs.1,00,500/-
3) Salary for Leave at Credit	Rs. 42,492/-
4) Gratuity	Rs.1,15,928/-
Total	Rs.4,08,420/-

In this regard, it is submitted that the petitioner in the statement showing the Terminal Benefits Rs.9,70,663/- in the ground 'd' is grossly illegal and highly exaggerated and not in accordance with the rules of 2nd Respondent Corporation.

6) It is further submitted that the employees of the 2nd Respondent Corporation (i.e. Public Sector undertaking of Government of Tamil Nadu) eligible for the maximum period of Earned Leave only for 180 days and not 240 days as alleged by the petitioner in para 4 and in the Statement of the affidavit. The other benefits such as encashment of unearned leave 90 days on private affairs, Bonus for 2000-01. D.A. arrears from 01.01.2001 - 30.04.2001 and from 01.07.2001 - 26.02.2002, Enhanced D.A. from 43% to 45% and V Pay Commission arrears between 01.01.1996 and 31.03.1998 (as alleged in para 4 and as calculated ground (d) in the Statement of the affidavit of the petitioner) were not extended to the employees of the 2nd Respondent

Corporation Corporation. As such said claims are not admissible as per rules of the 2nd Respondent Corporation being the Public Sector undertaking of Government of Tamil Nadu (i.e. Tamil Nadu Agro Industries Development Corporation Ltd.)"

11.In support of the aforesaid averment, the second respondent has relied upon the following communication which has already been addressed to the petitioner.

"The details of payment requested for are furnished below:

Information - I.

1) Ex-gratia Payable	Rs.	2,50,000
2) Ex-gratia actually paid as per Govt. order	Rs.	1,49,500
(1) Paid by way of Postal Pass Book No.203582.	Rs.	1,49,000
(2) By way of Cheque No.722572/24.9.02	Rs.	500
Total	= Rs.	1,49,500
3) Retrenchment compensation due	Rs.	1,00,471
Actually paid by way of cheque No.597149/ 26.3.2002	Rs.	1,00,500
4) Gratuity due	Rs.	1,15,928
5) Leave salary due	Rs.	42,492
Total	= Rs.	1,58,420
But for both the items actually paid by way of cheque No.662936/03.04.2002 after deducting Rs.500/- for bonus recovery	Rs.	1,57,920

Information - II

In respect of the Bonus for the year 2001-2202, the perusal of records reveals that the Board of this corporation has not taken up the question.

12.If we look at the calculation given by the second respondent, as reflected in the aforesaid communication dated 22.02.2010, it has become clear that, under the four heads viz., ex-gratia, retrenchment compensation, gratuity as well as leave salary due, the amount has been calculated and in each head, the said amount disbursed to the petitioner on various dates by way of cheque and the date of the cheque and number of the cheque also has been given.

13.Moreover, the receipt of the said amount totally

Rs.4,08,420/- has not been disputed by the petitioner.

14.The only grievance of the petitioner is that, the quantum of the due amount is not Rs.4,08,420/- but it is Rs.9,70,663/- and in support of the same, a calculation memo has been filed by the petitioner in the typed set of papers, where, under the four heads, the amount actually due, according to the petitioner, has been shown and the remaining amount i.e., balance to be paid, has been indicated.

15.I have gone through the said averments and after having gone through the counter affidavit, I find that, no doubt, under normal circumstances if the petitioner and others had been continuously working in the second respondent Corporation as employees, certainly, these kind of calculation would be possible.

16.However, in the case in hand, the second respondent Corporation had continuously registered loss for several years, therefore, the Government considering it that it is an overhead for the Government, for which, every year heavy financial support has to be given, to run the second respondent Corporation, therefore, the Government had taken a policy decision to close down the second respondent Corporation and accordingly, it was closed down.

17.However, while closing down the second respondent Corporation, the Government made a scheme to pay retrenchment compensation and other money under various other heads like ex-gratia payment, gratuity and surrender leave salary.

18.For the purpose of retrenchment of these workers, approval has been given by the concerned Department viz., Labour and and Employment Department through G.O.(D)No.163 dated 26.02.2002.

19.Therefore, insofar as the retrenchment made in respect of the petitioner and similarly placed persons i.e., 237 employees of the second respondent Corporation, there can be no quarrel or legal impediment.

20.Once the employees have been retrenched, only a retrenchment compensation can be given and that retrenchment compensation having been calculated for each of the employees of second respondent Corporation totally 237, an amount of Rs.926.08 lakhs has been sanctioned by the Government through G.O.Ms.No.81 referred to above and out of the said total amount of Rs.926.08 lakhs alone, the entire due payable to each of the employees totally 237 under four heads viz., retrenchment compensation ex-gratia, gratuity and leave salary had to be calculated and be paid, which accordingly been done by the second respondent and had been paid to each of the employees including the petitioner. Therefore, this Court finds no infirmity in the said calculation made by the second respondent, for which, amount has been sanctioned by the Government as one time measure to disburse the same to the employees. The amount also had been disbursed to the employees including the petitioner and insofar as the petitioner is concerned, his due of Rs.4 lakhs and odd since have already been paid, as stated above, this Court feels that, no further amount can be expected by the petitioner or any other employee of the second respondent Corporation as it has already been closed or wound up long back, therefore, the higher amount, as claimed by the petitioner, cannot be expected to be disbursed to the petitioner and therefore, the said claim made by the petitioner through this writ petition against the respondents, especially the second respondent, in the considered opinion of this Court, is untenable. Hence, the prayer sought for herein by way of mandamus cannot be granted. Accordingly, this Writ Petition fails, hence it is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Secretary to Government,
Agriculture Department,
Fort St. George, Chennai - 9.

2.The Managing Director,
Tamil Nadu Agro Industries
Development Corporation Limited,
Agro House, Industrial Estate, Guindy, Chennai - 32.

+1cc to Mr.R.Premnarayanan, Advocate, S.R.No. 16669
+1cc to Mr.C.Venkatesalu, Advocate, S.R.No. 17013
+1cc to the Government Pleader, S.R.No.16728

W.P.No.15214 of 2010

LN(CO)
GN(13/07/2021)