IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26582 of 2021
and
WMP.No.30939 of 2021

(Through Video Conferencing)

V.Govindarajan ...Petitioner

Vs

1. The Chairman,
   Chennai Port Trust,
   Rajaji Salai – 600 001.

2. The Senior Accounts Officer,
   Chennai Port Trust,
   Rajaji Salai – 600 001.

3. The Chairman,
   V.O.Chidambaranar Port Trust,
   Tuticorin – 628 004. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 2nd respondent herein in his proceedings in A.O. (pension) / SVRS 2016/2017 F dated 19.01.2017 and 17.02.2018 quash the same and direct the respondents 1 & 2 to pay the entire ex-gratia payment entitled by the petitioner together with interest at the rate of 12% per annum till payment for the delayed payment and disburse the same.

For Petitioner : Mr.S.Sathish Rajan

For R1 & R2 : Mr.Haja Mohideen Gisthi

For R3 : M/s.Gnanadeshikan Associates

ORDER

The petitioner has challenged the impugned order passed by the 2nd respondent dated 19.01.2017 wherein the claim of the petitioner for Ex-gratia payment equivalent to 1 ½ months emoluments (Basic Pay + D.A) for each completed year of service or the value of the emoluments that would have become payable for the balance month of service left whichever is less has been allegedly denied to the petitioner on the ground that the service rendered by the petitioner with the respondent Port Trust alone will be considered for payment of Ex-gratia.

2. In the communication, it has been further stated as follows:-

> Further, as the expenditure on SVRS has to be met from the internal resources of the respective Ports as per Ministry's approval, the service rendered in Chennai Port only will be considered for ex-gratia payment. This has the approval of FA & CAO.

3. The learned counsel for the petitioner submits that the petitioner had served about 30 years with the 3rd VOC Port Trust and was thereafter transferred to the 1st and 2nd respondents Port Trust on 31.03.2011 on mutual transfer basis. Thereafter, the Special Voluntary Retirement Scheme 2016 was announced by the respondent which was opted by the petitioner. The petitioner thus retired on 31.10.2016 under the aforesaid Special Voluntary retirement Scheme after rendering the service of 5 years and 7 months.

4. It is the case of the petitioner that as per the terms and conditions of the Special Voluntary Retirement Scheme, 2016, an employee who has completed 10 years of services and 40 years of age on the date of submission of the written application was entitled for Special Voluntary Retirement Scheme, 2016 and that in addition to the amounts that is payable under the scheme, an additional Ex-gratia was to be paid as per Clause g of Circular No.IR3/1691/2016/GA dated 29.09.2016 which reads as under:-

The Officers/employees allowed to retire under Spl.VRS would be eligible for the following benefits:-

> a. The balance in his / her provident fund account payable as per GPF / CPF Regulations applicable to him / her.
>
> b. Cash equivalent of accumulated earned leave payable as per the rules/regulations of the Port Trust.
>
> c. Gratuity as per Gratuity Act or the Gratuity Scheme applicable.
>
> d. Payment of PLR should conform to the provisions of Government's orders or the provisions of the Settlement reached between the management and the parties concerned.
>
> e. Casual Leave may be availed in proportionate

measure up to the date of SVRS.

f.Pension as per rules of the Chennai Port Trust viz., Chennai Port Trust (Pension) Regulations, 1987.

g. In addition, an officer / employee whose request for Special Voluntary Retirement under the Scheme is accepted would also be entitled to ex-gratia payment equivalent to 1 ½ months emoluments (Basic Pay + DA) for each completed year of service or the value of the emoluments that would have become payable for the balance months of service left whichever is less.

5. It is the contention of the petitioner that the denial of Ex-gratia was not justified as cumulative services rendered by the petitioner with VOC Port Trust for 30 years and 5 ½ years with the 1st and 2nd respondents Chennai Port Trust has to be reckoned.

6. On behalf of the respondents 1 and 2, the learned counsel for the respondents submits that the petitioner rendered only 5 ½ years with the 1st and 2nd respondents Chennai Port Trust and a sum of Rs.4,71,855/- has been paid to the petitioner. It is further submitted that when scheme was introduced by the Ministry, it was left to individual Ports to submit a proposal to the Ministry based on the financial implications involved and the availability of internal resources of the Port regarding the special benefits such as ex-gratia payments to be given.

7. The learned counsel for the respondent further submits that the sanction of Ministry of Shipping (MOS) to rectify the available schemes by vide letter dated 11.05.2016 and in annexure to the letter, under special benefits – ex-gratia payment, it was stated that entitlement for ex gratia is for each completed year of service rendered in Chennai Port and EDLB. It is further submitted that the case of one V.Meenakshi, AS, Finance Department, was considered under Special VRS-2012 and was paid ex gratia, including her service of 4 years at Tuticorin Port. It is submitted that considering the issues that arose during the previous VRS settlements, a condition was specifically included in SVRS-2016 proposal to the effect that for the settlement of ex-gratia payment, the term completed year of service would mean the regular service rendered in Chennai Port and EDLB only.

8. The learned counsel for the 1st and 2nd respondents submits that the petitioner has rendered about 30 years and 2 months with the 3rd respondent VOC Port Trust and therefore ex-gratia can be paid only by the 3rd respondent and not by the 1st respondent Port Trust. Though the petitioner was allowed to retire from SVRS 2016 while in service with the 1st and 2nd

respondent , the petitioner was not entitled for ex-gratia.

9. The learned counsel for the respondents therefore submits that there is no merits in the present writ petition. Hence, it is liable to be dismissed.

10. Appearing on behalf of the 3rd respondent, the 3rd respondent submits that the petitioner had been transferred on mutual transfer bass on 31.03.2011 to the 1st respondent Port Trust and while in service with the 1st respondent Port Trust, the special SVRS- 2016 came to be announcd by the 1st respondent on 29.09.2016 and therefore he submits that all the amount including ex-gratia was to be paid only in terms of the aforesaid schemes applicable to the 1st Respondent Port Trust. Since the petitioner was not an employee with the 3rd respondent VOC Port Trust at that time, the 3rd respondent cannot be saddled with any liability. He submits that the 3rd respondent cannot be made liable to pay ex-gratia under the SVRS-2016 applicable to the employees of the 1st and 2nd Respondent Port Trust.

11. I have perused the impugned order passed by the 1st respondent. By the impugned order of the 1st respondent rejected the request of the petitioner for ex-gratia in terms of Clause 2 (g) of SVRS 2016 of the 1st respondent Chennai Port Trust Officer. Clause 1 (a) SVRS, 2016 indicates that the said scheme is applicable to all regular employees in classes I to IV categories who were occupying the posts covered under the Schedule of Employees and who had completed 10 years of services and 40 years of age on submission of written application. Clause 2(g) which has been extracted in the beginning of the order clearly shows that ex-gratia payment equivalent to 1 ½ months emoluments (Basic Pay + DA) for each completed year of service or the value of the emoluments that would have become payable for the balance months of service left whichever is less is payable. Thus, the petitioner is eligible for one of the two, i.e., whichever is less. If the petitioner was entitled to retire under SVRS, 2016 the petitioner is also entitled for special ex-gratia under the aforesaid scheme.

12. If contention of the 1st respondent is accepted that the petitioner is not entitled for 1 ½ years emolments for each completed year of service for the period of 30 years and two months with the 3rd respondent, the 1st and 2nd respondents are liable to pay the emoluments that would have become payable for the balance months of service left. The scheme as framed and accepted by the 1st and 2nd respondent is applicable to all the employees uniformity irrespective of their past service in any other Port if such past service was considered for allowing an employee to opt for SVRS, 2016. It is not open for the 1st and 2nd respondents to supply additional condition to clause 2(g) to

SVRS, 2016 by stating that ex-gratia will be available only for service rendered with the 1st respondent and that for 30 years and two months services, the petitioner should get it from the 3rd respondent. If the 1st option is not applicable, the 1st and 2nd respondents are bound to pay emoluments that would have become payable for the balance months of service. The amount of ex-gratia payable claimed by the petitioner under SVRS, 2016 equivalent to 1 ½ months emoluments (Basic Pay + DA) for each completed years of service is lesser than the value of the emoluments that would have become payabe for the balance months of service left whichever is less. The petitioner has not asked for higher amounts. Therefore, there is no merits in the impugned order of the 1st respondent.

13. In the light of the above, this writ petition is allowed. The 1st and 2nd respondents are directed to pay the balance ex-gratia amount to the petitioner after adjusting an amount of Rs.4,71,855/- already paid to the petitioner within a period of 8 weeks from the date of receipt of this order together with 6% as interest for delay.

14. This writ petition stands allowed with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
   Chennai Port Trust, Rajaji Salai – 600 001.

2. The Senior Accounts Officer,
   Chennai Port Trust, Rajaji Salai – 600 001.

3. The Chairman,
   V.O.Chidambaranar Port Trust,
   Tuticorin – 628 004.

+1cc to M/s.Gnanadeshikan Associates, Advocate, S.R.No.44341

W.P.No.26582 of 2018 and
WMP.No.30939 of 2021

SV-I(CO)
RGA(01/10/2021)