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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.03.2022
PRONOUNCED ON : 15.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.32297 & 32505 of 2012

In W.P.No.32297 of 2012

Ct.Meyyappan

...Petitioner

Vs.

1. M/s.Government of India
rep. by its Joint Secretary (P & A) & CVO,
Department of Fertilizers,
Ministry of Chemicals & Fertilizers,
Room No.221-A Wing, Shastri Bhavan,
New Delhi-110 001.
2. The Government of India
rep. by its Secretary,
Department of Public Enterprises,
Ministry of Heavy Industries & Public Enterprises,
Public Enterprises Bhavan,
Block No.14, CGO Complex,
Lodhi Road, New Delhi 110 003.
3. The Chairman cum Managing Director,
Madras Fertilizers Ltd.,
Manali, Chennai-600 068.
4. The Deputy General Manager-P&A,
Madras Fertilizers Ltd.,
Manali, Chennai-600 068.

...Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the letter dated 31.07.2012 issued by the fourth respondent and quash the same and further direct the respondents to grant the benefit of enhancement of gratuity from Rs.3.5 lakhs to Rs.10 lakhs for the petitioner with all consequential benefits.

For Petitioner : (*) **Mr.K.S.Viswanathan**

For Respondent Nos. 1 & 2 : Mr. J.Madanagopal Rao, ACGSC

For Respondent Nos. 3 & 4 : Mr. D.Vijayakumar



In W.P.No.32505 of 2012

1.V.Venkataraman

2.K.Vaidyanathan

3.D.Boobalan

4.S.Devaraj

5.R.Ponusamy

6.S.Subramaniam

7.R.Parthasarathy

8.D.Venkatesan

9.B.Muralimohan

10.V.Purushothaman

11.V.Geetha

12.Awatiger M.B

13.M.S.Satyanarayana

14.S.Nagalingam

15.(*) The Writ Petition in respect of the 15th Petitioner stand dismissed as withdrawn as per order dated 23/02/2016 by TRJ in WMP.4053/2016 in WP.32505 of 2012

16.T.Maheswaran

17.M.Mane

18.S.Shanmuga Sundaram

19.P.Purushotham

20.K.Kannaiyan

21.P.S.Kalirajan

...Petitioners

Vs.

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Lodhi Road, New Delhi 110 003.

3. The Chairman cum Managing Director,
Madras Fertilizers Ltd.,
Manali, Chennai-600 068.

...Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the third respondent herein to grant the benefit of enhancement of ceiling on terminal gratuity from Rs.3.5 lakhs to Rs.10 lakhs to the petitioners who retired from service between 01.01.2007 and 24.05.2010 from the third respondent with all consequential benefits.

For Petitioners	: (*) Mr.K.S.Viswanathan
For Respondent	
Nos.1 & 2	:Mr.J.Madanagopal Rao, ACGSC
For Respondent-3	:Mr.D.Vijayakumar

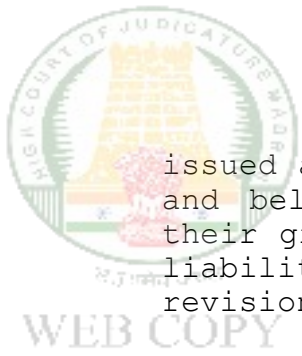
C O M M O N O R D E R

All the petitioners herein, who are Board Level Executives and Non Unionized Supervisors in Madras Fertilizers Limited, Manali, Chennai (MFL), had retired from their respective services between 2007 to 2010. All of them claim the benefit of enhancement of gratuity from Rs.3.5 lakhs to Rs.10 lakhs in accordance with the Office Memorandum (O.M.) of the Department of Public Enterprises, Government of India, dated 26.11.2008. Since the claim of these petitioners are one and the same, both the Writ Petitions are disposed of, through a common order.

2. Heard the learned counsel for the parties.

3.1. MFL is a Central Public Sector Enterprises (CPSE) under the Department of Public Enterprises, Government of India. Since the pay revision of the Board Level Executives and Non Unionized Supervisors in MFL fell due after lapse of 10 years, (i.e.,) on 01.01.2007, the Central Government had set up a Pay Revision Committee to recommend the revision of pay and allowance for various grades of the Board and below Board Executives in CPSEs, which Committee was headed by the Hon'ble Mr. Justice M.Jagannadha Rao.

3.2. Based on the recommendations of the Committee, the DPE



issued an O.M. dated 26.11.2008, revising the pay scale of Board and below Board Executives, apart from fixing the ceiling of their gratuity at Rs.10 lakhs, with effect from 01.01.2007. The liability of the financial implications arising out of the pay revision of gratuity was fixed on the CPSE.

3.3. In accordance with the O.M. dated 26.11.2008, MFL had revised the pay scales, perquisites and allowance of Board Level Executives and Non Unionized Supervisors, with effect from 01.01.2007. However, the payment of the gratuity was determined at Rs.3.5 lakhs as per pre-amended Section 4(3) of the Payment of Gratuity Act, 1972 [hereinafter referred to as "PG Act"], by holding that since the petitioners herein had retired prior to 24.05.2010, which is the date on which the amendment to the PG Act was made, enhancing the gratuity from Rs.3.5 lakhs to Rs.10 lakhs, they are not entitled to claim gratuity at Rs.10 lakhs. This order dated 31.07.2012, fixing the gratuity amount of the petitioners at Rs.3.5 lakhs, is put under challenge in these Writ Petitions.

4. Incidentally, the sum of Rs.3.5 lakhs towards gratuity, claimed to be the eligible gratuity payable to the petitioners, were already disbursed to them.

5. The O.M. dated 26.11.2008 issued by the second respondent, provided for payment of gratuity and the financial implications thereon in the following manner:-

"Clause (13): Gratuity:-

The ceiling of gratuity of the executives and non-unionized supervisors of the CPSEs, would be raised to Rs.10 lakhs with effect from 01.01.2007.

Clause (16): Financial implications:-

The CPSE concerned has to bear the additional financial implications on account of pay revision from their own resources and no budgetary support will be provided." In Annexure I of the O.M., the revised pay of scale of the Board and below Board Executives were provided. In accordance with this O.M., the pay scale of the petitioners herein was also revised by MFL on 21.04.2011, with effect from 01.01.2007. Insofar as the payment of gratuity is concerned, the amount was fixed at Rs.3.5 lakhs only on the ground that these petitioners had retired prior to 24.05.2010 and therefore the amendment of enhancement of gratuity to Rs.10 lakhs, was denied to them.

6. While the learned counsel for the petitioners submitted that MFL is a Profit Making Company from the financial year



2009-2010 and similar CPSEs like FACT-Cochin; National Fertilizer-Bhatinda; RCF-Trombay; CPCL- Chennai; etc., have increased the retirement terminal gratuity from Rs.3.5 lakhs to Rs.10 lakhs, in accordance with the O.M. dated 26.11.2008, MFL alone had deviated and adopted the sum of Rs.3.5 lakhs.

7.Per contra, the learned counsel appearing for the MFL submitted that the O.M. dated 26.11.2008, provided for revision of pay scales and gratuity, subject to the condition that the additional outgo by such revision for a period of 12 months should not result in more than 20% dip in profit before tax for the year 2007-2008 for these Board and below Board Level Executives. He further submitted that since the Company suffered an accumulated loss of Rs.505.20 Crores in the year 2009-2010, it was declared as a 'Sick Company' by the BIFR under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. In this background, he submitted that since the affordability for the implementation of the pay revision under the O.M., is subject to the financial capability of MFL, they are constrained to restrict the gratuity at Rs.3.5 lakhs.

8. It is not in dispute that MFL had revised the pay scales of the petitioners with effect from 01.01.2007, four years after their Company was declared as a 'Sick Company' by the BIFR. In the proceedings of the third respondent dated 21.04.2011, whereby the pay revision was effected, MFL had universally approved the revised pay scales in accordance with the O.M. dated 26.11.2008 to all its Board and below Board Level Executives. This proceedings dated 21.04.2011, does not refer to the financial constraints or incapacibilities to bear the financial implications. Neither was any reference made to their proposal to restrict the gratuity at Rs.3.5 lakhs, in deviation to Clause 13 of the O.M., which fixes the ceiling at Rs.10 lakhs with effect from 01.01.2007, though MFL was declared as a sick unit on 02.04.2009. Though the O.M. provided for an option to restrict the revised pay scale on the ground of affordability for implementation of "Pay Revision", MFL chose to comply with the recommendations of the revised scale of pay made in the O.M. to all its Board and below Board Level Executives. When the aggrieved Executives had made representations seeking for the differential gratuity between Rs.3.5 lakhs to Rs.10 lakhs, MFL came up with the novel idea of adhering to the provisions of the pre-amended PG Act and denied the difference through the impugned letter dated 31.07.2012.

9.The only objection of MFL in denying the difference of gratuity is owing to the financial constraints of MFL. When the pay scale revision was effected on 21.04.2011, MFL was a Profit Making Company from the year 2009-2010 onwards, which aspect has not been denied by them. Likewise, when MFL chose to revise the



pay scale of the Executives in accordance with the prescribed pay scales in the O.M., there is absolutely no explanation or justification for restricting the gratuity at Rs.3.5 lakhs.

10. In similar circumstances, when the State Farms Corporation of India Ltd., a CPSE, had claimed that the payment of gratuity to the executives would be regulated under the PG Act ceiling of Rs.3.5 lakhs, the Delhi High Court in the case of State Farms Corporation of India Ltd., (SFCI) Vs. P.S. Gupta reported in 2014 SCC Online Del 3419, held that the affordability of the CPSEs cannot be applied to the gratuity alone, when the pay revision has been effected in accordance with the O.M. The relevant portion of the order reads as follows:-

"11. Having considered the submissions made by the learned counsel for the parties, I note that the O.M dated November 26, 2008 is very clear. The said O.M was issued pursuant to the recommendations made by a Committee under the Chairmanship of Justice M. Jaganadha Rao (Retired Judge of Supreme Court of India), wherein the substantive issue was with regard to pay revision of the employees of the Public Sector Undertakings. The O.M also notifies other benefits. What is of importance is clause 3 and clause 17, which I reproduced hereunder:

"3. Affordability for implementation of pay revision:-

The revised pay scales would be adopted, subject to the condition that the additional outgo by such revision for a period of 12 months should not result in more than 20% dip in profit before tax (PBT) for the year 2007-08 of a CPSE in respect of executives as well as non-unionised supervisory staff taken together in a CPSE. CPSE that cannot afford to pay full package, can implement with either part PRP or no PRP. These CPSEs may pay the full package subsequently, provided the dip in the profit (PBT) is fully recouped to the original level.

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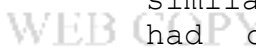


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percentage of profit is fully recouped to the original level. Meaningfully read, the question of package depends upon the affordability. It is noted from the agenda note put up for consideration of the Board of the petitioner company, a reference is made to the discretion vested with the concerned CPSE. Unfortunately, I note, the affordability has been considered only with respect to the revision of pay scales and not with regard to other benefits including the gratuity. It was expected from the Board to consider the affordability of each benefit, at least, those to be given from 01.01.2007, keeping in view the parameters laid down in OM dated November 26, 2008."

11. The SFCI's case came to be followed by the High Court of Karnataka in National Confederation of Ex-employees Association and 178 others V. The Secretary, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises Bhavan, New Delhi and Others passed in W.P.Nos.36530 to 36708 of 2016, etc., dated 11.01.2019 in the following manner:-

"6. Shri S.N.Murthy, learned Senior Counsel appearing for the petitioners would submit that the petitioners are not laying the claim under the Gratuity Act, but are invoking the directions issued in the Official Memorandum dated 26.11.2008 and 02.04.2009. The learned Senior Counsel draws the attention of this Court to a judgment of the Delhi High Court in the case of State Farms Corporation of India Limited Vs. P.S.Gupta in W.P.(C)No.907/2013 which was decided on 01.07.2014. In that case, the retired Executives requested the employer to pay the difference in the gratuity amount i.e., Rs.6,50,000/- in terms of the Official Memorandum and Presidential Directives. The employer did not accede to the request on the ground that they are not entitled to gratuity as per the Act, which has already been paid to them. Similar reasons were assigned stating that Section 4(3) of the Act was amended with effect from 24.05.2010, while the Executives had retired well before the amendment. Thereafter, an application was made before the Controlling Authority and the Controlling Authority allowed the claim of the Executives thereby declaring that the employer/Executive is entitled to receive an amount of Rs.6,50,000/-, which is the difference



sending the case for approval of the Ministry of Agriculture."

12. The facts involved in the aforesaid two decisions is similar to that of the facts in the present case, wherein MFL had denied the difference in gratuity on the ground of affordability. As held in the aforesaid decisions, the affordability requires to be applied for "every benefit", including pay revision and gratuity. If the aforesaid ratio is applied to the present case, the impugned order, extending the benefit of O.M. dated 26.11.2008, to pay revision alone and denying the benefit of full gratuity of Rs.10 lakhs, it would defeat the object of the O.M. Thus depriving the differential gratuity of Rs.6.5 lakhs, which in justice and equity belongs to the petitioners, would amount to unjust enrichment.

13. The learned counsel for the MFL placed reliance on the case of Electronics Corporation of India, Hyderabad Vs. The Controlling Authority under P.G. Act & Assistant Labour Commissioner, Hyderabad and another passed in W.P.No.7128 of 2015, dated 30.09.2016 of the Andhra Pradesh High Court, wherein the gratuity was determined at the ceiling limit of Rs.3.5 lakhs by taking into consideration the financial impact of CPSE. The decision in Electronics Corporation of India cannot be applied to the present case, since the CPSE therein had restricted all the benefits under their O.M. in view of the financial constraint including pay revision, whereby the revision was effected on different dates to balance the financial constraint. This is not the position in MFL's case, wherein the pay revision was effected in toto as per the O.M., dated 26.11.2008.

14. The learned counsel for the MFL also made a reference to the pay revision adopted by FACT, a CPSE, which had implemented the O.M. through their order dated 14.08.2010. The reference seems to be on a misconception of facts, since the payment of the revised pay and gratuity of FACT is in conformity with the claim made by the petitioners in MFL's case and this is evidenced in Clause 12.1 and 12.4 of the pay revision order of FACT dated 14.08.2010, which covers the benefits to the retired employees till 14.08.2010, including the ceiling on payment of gratuity at Rs.10 lakhs.

15. For all the foregoing reasons, I am of the considered view that the decision of MFL in the impugned letter dated 31.07.2012 in fixing the gratuity ceiling at Rs.3.5 lakhs in accordance with the pre-amended provision of Payment of Gratuity Act, after implementing the pay revisions fully in accordance with the O.M. dated 26.11.2008, cannot be sustained.

16. In the result, the impugned letter dated 31.07.2012 of



the MFL/fourth respondent, is quashed. Consequently, there shall be a direction to the respondents 3 and 4 herein to disburse the differential gratuity amount of Rs.6.5 lakhs to each of the petitioners herein, within a period of four weeks from the date of receipt of a copy of this order. Both the Writ Petitions stands allowed accordingly. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS III)
(25.03.2022)

***Corrected as per Order
of this court dated 26.04.2022**

Sd/-
Assistant Registrar(CS III)
(02.06.2022)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Joint Secretary (P & A) & CVO,
M/s.Government of India,
Department of Fertilizers,
Ministry of Chemicals & Fertilizers,
Room No.221-A Wing, Shastri Bhavan,
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2. The Secretary,
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3. The Chairman cum Managing Director,
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Manali, Chennai-600 068.

4. The Deputy General Manager-P&A,
Madras Fertilizers Ltd.,
Manali, Chennai-600 068.

+lcc to Mr.D.Vijayakumar, Advocate SR.No.17207

**To be substituted
the Order
already
Despatched on
07.04.2022**

W.P.Nos.32297 & 32505 of 2012

GPL(CO)
GN(28/03/2022)

RGA(03/06/2022)