



WEB COPY



W.P.No.600 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P.No.600 of 2020

T.Sathiah

Vs

....Petitioner

1. The Chairman and Managing Director,
Bharath Heavy Electricals Limited,
BHEL House,
2nd Floor, Siri Fort, Asid,
New Delhi – 100 049.
2. The Executive Director,
HR & CC/BHEL, BHEL House,
2nd Floor, Siri Fort, Asid,
New Delhi – 100 049.
3. The Senior Manager (HR),
Bharat Heavy Electrical Limited,
Power Sector, 2nd Floor,
BHEL House, Siri Fort,
Asid, New Delhi -100 049
4. The Additional General Manager/HR, BHEL,
HR- Power Sector – Southern Region,
Nandanam,
Chennai – 600 035.

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records connected in No.PA:HRM:2019 (2751585) dated 01.08.2019 of the 3rd



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respondent and quash the same and direct the respondents to pay encashment leave salary and refund the recovery amount of Rs.56,912/- and also arrears of salary from 01.01.1980 to 31.05.1981 at the Libyan Dinar along with bonus as per the rules

For Petitioner : Mr.E.Sanjay
For R1 to R4 : Mr.A.V.Arun

ORDER

The instant Writ Petition has been filed challenging the impugned order dated 01.08.2019, by and which, the respondent had stated that the petitioner is not eligible for earned leave for the period 1971 to 1981 as per the BHEL's extant rules.

2. The learned counsel for the petitioner would vehemently submits that the petitioner is B.E graduate in Mechanical Engineering from Alagappa Chettiar College of Engineering and Technology. He obtained degree in the year 1970. He had also obtained M.B.A Degree from Madras University. He further submits that the petitioner was appointed as Graduate Engineer and he was posted in BHEL, Trichy, and thereafter on deputation, he was transferred to Libya (Tripoli Site) and was given with facility, to stay along with his family. He would submit that, in the meanwhile, he tendered resignation on 12.11.1981 and there was a delay



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in settling the terminal benefit, which necessitated him to prefer a Writ Petition, pursuant thereof, though the respondent has settled petitioner's other claim, till date did not settle the encashment of salary amount and also did not refund the illegally recovered amount.

3. Per contra, the learned Standing Counsel appearing for the respondents would vehemently submit that, this is the 3rd round of litigation, and that, by virtue of W.P.No.12394 of 2012 dated 27.04.2019, all the claims arising after 1981 had been resolved and that the petitioner's claim was outrightly rejected by the the learned Single Judge. He would further contend that, the alleged encashment of salary cannot be given to the petitioner as he did not give, mandatory six months prior notice, before his resignation.

4. It is the further submission of the learned Standing Counsel that the petitioner's prayer to refund Rs.56,912/- is irrational to law as the petitioner himself voluntarily paid the said amount in the year 2006, and in such scenario, he cannot seek for refund after lapse of 14 years, as the same is hit by latches.



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5. I have given my anxious considerations to the either side submissions.

6. The issue between the petitioner and the respondents have been lingering since 2011. This Court hopes that, this would be the last Writ Petition of the petitioner. While looking at the petitioner's claim, it is on two fold, one is for seeking recovery of a sum of Rs.56,912/- which was paid by the force of the respondent under the pretext to settle the PF and gratuity. The other claim is in respect of encashment of leave salary for the period prior to 1981.

7. While coming to the petitioner's request for refund of Rs.56,912/- as rightly contended by the learned counsel for the petitioner, on the letter received from the respondent, he made payment on 24.01.2006 vide cheque and the petitioner also submitted letter, in evidence thereof. On perusal of the said letter, the above payment was made under protest. However, the learned Standing Counsel would submit that, there is a long delay in preferring the Writ Petition to claim the said amount and that this long delay would definitely cause great hardship to them to find out the records and other details to reconcile the petitioner's statement.



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8. This Court is of the view that, the long delay to seek refund of the amount, would definitely disentitle the petitioner as it is hit by laches.

Further, as rightly contended, it would also become difficult for the respondent to reconcile their account at this length of time.

9. The next claim is in respect of the encashment of earned leave salary. In this regard, the Standing Counsel would invite the attention of this Court in respect of the earlier order of the learned Single Judge in W.P.No.12394 of 2012 dated 27.04.2019, wherein there is a specific finding that the claim between the petitioner and the respondent was ultimately resolved and the respondent had acknowledge the full quit of all the claims of the petitioner.

10. However, the learned counsel for the petitioner would invite the attention of this Court that the above Writ Petition deals about only the arrears for the period after 1981, whereas, the petitioner is now seeking the encashment of leave salary between 1971 to 1981. No doubt, as rightly contended by the learned counsel for the petitioner the order dated 27.04.2019 is only in respect of the claim arising after 1981.



11. At this juncture, the learned Standing Counsel invited the attention of this Court that, by virtue of BHEL's leave rule, petitioner is not entitled for leave salary and this factum has been rightly informed to the petitioner by way of impugned order. The learned Standing Counsel invited the attention of this Court in respect of Rule 5 of BHEL's leave rules, wherein Rule 5.1.1 states as follows:

An employee on resignation may be permitted to encash the encashable portion of earned leave at his/her credit subject to the condition that necessary notice as required under the rules for resignation has been given by the employee and opts to serve the Company during the notice period or is permitted to set off/ adjust the earned leave at his credit against the notice period/ balance notice period. Subject to meeting these conditions, an employee may be permitted to encash the balance encashable earned leave on a second occasion during the calendar year. In cases wherein an employee has encashed earned leave during the calendar year and seeks waiver of notice period, the employee will be required to refund the encashed amount for the duration of such waiver. In all such cases of resignation, the non-encashable portion of the earned leave is not allowed to be encashed. An employee who abandons the service/ leaves service without approval of the management will not be entitled to encashment of earned leave.



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12. As per the above rules, it is mandatory on the part of the petitioner to give six month prior notice for his resignation. But in the case in hand, admittedly petitioner had not given any notice. Therefore, in accordance with the rule, petitioner is otherwise not entitled for encashment of earned leave salary for the period prior to 1981. Accordingly, this Court is of the view that the petitioner has no ground to interfere with the impugned order.

13. In the result, the Writ Petition stands dismissed. No costs.

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Index :Yes/No
Neutral Citation : Yes
Speaking order : Yes
Sma



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C.KUMARAPPAN, J

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