



W.P.No.174

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.11.2023

DELIVERED ON: 31.01.2024

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.17445 of 2010

N.Chezhian

...Petitioner

vs.

1.The State of Tamilnadu,
rep. by Secretary to the Government,
Handlooms, Handicrafts, Textiles & Khadi Department,
Fort St. George, Chennai – 600 009.

2.The Director of Handlooms & Textiles,
Kuralagam, Chennai – 600 108.

3.The Administrator,
Srivilliputhur Cooperative Spinning Mills Ltd.,
Srivilliputhur, Virudhunagar District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the orders in Na.Ka.No.29174/2008/D2/2 dated 30.01.2009 (Masi 01, Thiruvalluvar Year 2040) on the file of the second respondent, quash the same and to direct the second respondent to pay the petitioner the amount due on account of salary, annual increments, earn leave encashment etc, due to him during the period of



W.P.No.174

status) of the third respondent Spinning Mills, between 01.07.2003 to 05.07.2007, in pursuant to his representation dated 29.08.2008.

WEB COPY

For Petitioner : Mr.R.Selvakumar

For Respondents : Mr.R.N.Neethi Perumal for R1 & R2
Mr.Siva Shanmugam for R3

ORDER

The Writ Petition has been filed challenging the order passed by the second respondent dated 30.01.2009 denying the salary and other benefits to the petitioner for which he was entitled to during the period of non-employment due to the closure of the third respondent Spinning Mill.

2.Heard Mr.Selvakumar, learned counsel appearing for the petitioner, Mr.R.N.Neethi Perumal, learned Government Advocate for respondents 1 and 2, and Mr.Siva Shanmugam, learned counsel for the third respondent.

3.The learned counsel for the petitioner would submit that the petitioner was appointed as a Supervisor in the South Arcot District Cooperative Spinning Mill by the second respondent. As per the appointment order, the post in which the petitioner was appointed was a post having a time scale and the same is transferable to any of the Spinning Mills under the administrative control of the second respondent. He would contend that the post of the petitioner was confirmed on 26.5.1982 and he continued to work as a supervisor till July 2003.



W.P.No.174

WEB COPY

4.He would submit that in July 2003, the third respondent/Spinning Mill in which the petitioner was working had been declared as defunct and the same was closed without following any procedure for closure. At the time of the closure of the Mill, the petitioner had requested the second respondent to post him in any of the Cooperative Mills which are functioning. He would submit that the second respondent can always put the petitioner into any of the Spinning Mills, as the post of the petitioner as per the appointment order is transferable within the State of Tamil Nadu, but the second respondent has not taken any steps to post the petitioner in any of the Mills and has also not paid any salary.

5.He would submit that the petitioner was put under compulsory wait, awaiting posting in any one of the functioning Spinning Mills. He would further contend that out of 18 Cooperative Spinning Mills, 13 had been closed down declaring defunct and many are put into the compulsory wait and even in the list of seniority of Supervisors there are several anomalies and favouritism and many of the Supervisors, who are junior to the petitioner got posted in other Spinning Mills.

6.He would further submit that during the year 2003, the second respondent had announced a scheme for Voluntary Retirement and several employees and staffs of the Cooperative Spinning Mills had opted the scheme



W.P.No.174

WEB COPY

and the petitioner and 12 other Supervisors did not opt for the same and they had opted to continue in the same post. Thereafter, the second respondent had put pressure on all the employees who had not opted for the VRS to leave the Spinning Mills. The petitioner and few others continued waiting for the posting in some other Spinning Mills. He would submit that the Spinning Mills even though being a functionary under Government has no specific Rule or guidelines in the Bye-laws regarding the payment of wages or salaries of those employees in the Mill if once it is declared as defunct. He would submit that when the Rules or Bye-laws are not stated about any issues then, in the absence of any such Rules, the laws meant for the Government Department would become applicable.

7.He would further submit that as per the service regulations, an employee shall be paid wages for the entire period of detention as a result of closure or stoppage of work. He relied on the Fundamental Rule 9(6)(b), which states that if posting could not be given to an employee then, the waiting period shall be treated as compulsory wait period and that for the said period, an employee is eligible for salary and all other benefits, allowances etc., and that he should be treated as on duty and be given posting elsewhere. He would contend that the petitioner was not employed elsewhere after the closure of the third respondent



W.P.No.174

Spinning Mill and he was waiting for the orders of the second respondent to whom the petitioner has requested to post him in any other functioning Mills.

WEB COPY

8.He would submit that the second respondent on 03.07.2007, had issued a posting order to the petitioner, posting him as a Supervisor in Pudukottai District Cooperative Spinning Mill and it was stated in the posting order that the petitioner will not be eligible for any payment for the period between 01.07.2003 and 05.07.2007. He would further submit that the petitioner was coerced by the second respondent to give an undertaking to that effect stating that he did not want any salary to be paid by the second respondent from July 2003 to July 2007. On 11.07.2007, the petitioner had given such an undertaking only after that the petitioner was posted as a Supervisor.

9.He would further submit that the petitioner has given a representation to the second respondent seeking arrears of salary and amount due on account of annual increment on 29.08.2008, amounting to a sum of Rs.6,41,301/-. For which, the second respondent had issued an order stating that there are no provisions in the service regulations to pay salary for the compulsory wait period and denied the arrears due to the petitioner by order dated 30.01.2009. He would contend that he has waited for 4 years and he was not employed elsewhere during that period and as such he is entitled for the salary and other



W.P.No.174

allowance and service benefits for the period 01.07.2003 to 05.07.2007.

Therefore, he seeks interference of this Court to set aside the order impugned in this Writ Petition & he prays this Court to allow the Writ Petition.

10.Countering his arguments, the learned counsel for the respondents 1 and 2 would contend that the petitioner was working in the third respondent Cooperative Spinning Mill and the same ceased to function due to so many factors. He would further contend that the employees of the third respondent had announced the Voluntary Retirement Scheme. But the petitioner did not opt for the same. Thereafter, based on the request of the petitioner, the second respondent had appointed him in Pudukottai District Cooperative Spinning Mill, and the appointment was made subject to the condition that the petitioner shall not claim back wages on the analogy of no work no pay for the period in which the petitioner had not worked.

11.He would further submit that the petitioner had agreed to and had given an undertaking to the effect that he shall not claim any back wages and he had joined in the duty at Pudukottai District Cooperative Spinning Mill. Not only the petitioner had given such an undertaking all those staff who had not opted for VRS had given such an undertaking and they were all aware of their status as no work no pay. He would submit that the staffs who worked in the



W.P.No.174

WEB COPY

cooperative Spinning Mills which was declared to be defunct were given employment as and when vacancies arose, for those persons who had not opted for the VRS Scheme and the petitioner was also duly employed, so there is nothing to claim that the petitioner was put under compulsory wait. He would further submit that the Cooperative Spinning Mills are registered under Tamil Nadu Cooperative Societies and they are governed by separate Rules and Act.

12.He would submit that there is no dispute as such the appointment order of the petitioner had stated that the post is transferable one, but this does not mean that one should be given alternative employment in the event of the defunct stage of the Cooperative Spinning Mill. He would also submit that the seniority position of the petitioner had not been changed even though he had not worked between the period of defunct stage of the third respondent Mill. The second respondent had taken efforts to provide monetary benefits on the basis of humanitarian ground and had also provided jobs for all the workmen including the staff of the defunct Mills and all the amount due under terminal benefits have been settled under Voluntary Retirement Scheme for those who have opted for the same.

13.He would submit that the Cooperative Spinning Mills are governed under Tamil Nadu Cooperative Societies Act and the Government of Tamil Nadu being one of the investors in the share capital of the Mills, cannot take all the



W.P.No.174

WEB COPY

liabilities of the Mills to provide employment for those staffs in case of defunct stage and they are also not liable for the amount due to the employees for the period for which they had not worked. Therefore, the claim of the petitioner cannot be entertained and the second respondent by order dated 30.01.2009 had rejected the claim of the petitioner. Therefore, the respondents prays this Court to dismiss the Writ Petition as the same is devoid of merits.

14.I have considered the rival submissions made by the respective counsel appearing on either side and perused the materials available on record before this Court.

15.The admitted case is that the petitioner had been working as a Supervisor till 2003. The Spinning Mill that he had been employed had become defunct and thereafter, he had been kept under compulsory wait till 2007. The claim of the petitioner is for the salary between the period July 2003 & July 2007 which is during the period of compulsory wait. The same is contested by the respondents by claiming that the petitioner had given an undertaking that he will not claim for any salary for the aforesaid period and therefore, he cannot turnaround to claim that he would be entitled for salary. It is not disputed by the respondents that the orders of posting were issued to the petitioner only on the



undertaking had been taken by the respondent from the petitioner only under coercion and therefore, the same cannot be put against the petitioner.

16.It is also an admitted case that the petitioner had been kept under the compulsory wait. Even if an employee is placed under suspension, it is a recognised principle of law that such suspended employee would be entitled for subsistence allowance which would not be more than 50% of his salary. The petitioner cannot be placed in a worse position than a suspended employee facing disciplinary action. It is not the fault of the petitioner that the Spinning Mill had become defunct. The State is the one which runs the Spinning Mills through Cooperative Society. It was the State who had to take necessary precaution that a Mill running under it does not become defunct & if that is the case, they should have taken necessary precaution to protect the employees of the Spinning Mill, the employees of the Spinning Mill were also not paid any closure payment. But, they were made to sit idle and they were given employment subsequently, the petitioner is entitled for a decent livelihood to maintain his family.



W.P.No.174

it is noted that the petitioner had attained the age of superannuation and definitely he would have been retired from the service with all terminal benefits which he is entitled to.

WEB COPY

18.In fine, the Writ Petition is allowed and the order impugned in this Writ Petition is set aside. The petitioner is entitled for the salary between the period 01.07.2003 & 05.07.2007. Such payments shall be made by the second respondent within a period of 12 weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

31.01.2024

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



W.P.No.174

To

WEB COPY

- 1.The Secretary to the Government,
Handlooms, Handicrafts, Textiles & Khadi Department,
Fort St. George, Chennai – 600 009.
- 2.The Director of Handlooms & Textiles,
Kuralagam, Chennai – 600 108.
- 3.The Administrator,
Srivilliputhur Cooperative Spinning Mills Ltd.,
Srivilliputhur, Virudhunagar District.
Handlooms, Handicrafts, Textiles & Khadi Department,
Fort St. George, Chennai – 600 009.



WEB COPY



W.P.No.174

K.KUMARESH BABU, J.

pam

**A pre-delivery order in
W.P.No.17445 of 2010**

31.01.2024



W.P.No.1744

W.P.No.17445 of 2010

K.KUMARESH BABU, J.

WEB COPY

After the order was pronounced by this Court, the learned counsel for the petitioner would submit that in view of the orders passed by this Court, the provident fund amount which the petitioner is entitled to would also be impacted. Since the petitioner has not been paid the salary for the said period which has been ordered by this Court there would be no deduction of provident fund from his salary nor the employer would have contributed his part to the provident fund amount. In such circumstances, when the salary as directed is being paid to the petitioner, the provident fund payable by the petitioner (employee contribution) could be deducted and the employer shall also make its part of the amount and the same shall be deposited to the provident fund account of the petitioner.

2. Such exercises shall also be completed within a further period of four weeks from the date of compliance of the orders passed in the Writ Petition.

31.01.2024

pam



WEB COPY



W.P.No.174

K.KUMARESH BABU, J.

pam

W.P.No.17445 of 2010

31.01.2024