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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.13335 of 2024

P.Selvakumar ... **Petitioner**

Vs.

1.The Commissioner,
Employees' Provident Fund Organisation,
Regional Provident Fund Office,
Bhavishya Nidhi Bhawan,
S-1, TNHB, Phase – III, Sathuvachari,
Vellore, Tamil Nadu – 632 009.

2.The Chairman cum Managing Director
Bharath Heavy Electricals Ltd,
BHEL House, Siri Fort, New Delhi – 110 049.

3.Senior Deputy Manager
(Law, Estate, F.S. & Security)
Bharath Heavy Electricals Ltd,
Boilers Auxillaries Plant
Ranipet, Ranipet District – 632 406. ... **Respondents**

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Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, to direct the 1st respondent to pay Pension under 1995 Pension Scheme and the 3rd respondent to settle PF amount with 12 % interest to the petitioner.

For the Petitioner	:	Mr.S.T.Varadarajulu
For the Respondents	:	Mr.P.K.Paneerselvam for R1 Mr.P.Raghunathan for RR2&3

ORDER

This Writ Petition is filed for a Mandamus, directing the respondents to pay the pension under the Pension Scheme, 1995 and the 3rd respondent to settle the Provident Fund amount with 12 % interest to the petitioner and for further or other orders.

2. The case of the petitioner is that while he was discharging his service under the 3rd respondent, for an alleged misconduct, he was dismissed from service, by an order dated 09.10.1993. An Industrial Dispute was raised in

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I.D.No.341 of 1998 and the Labour Court passed an award on 20.01.2004, in favour of the workman.

3. Writ Petition No.9316 of 2014 was filed challenging the award, which came to be dismissed. As against this, W.A.No.1077 of 2014 was filed by the Management, which was allowed, setting aside the order in the Writ Petition as well as the award of the Labour Court, by remitting the matter back to the Labour Court, to decide the issue of non-employment afresh.

4. Once again, by an order dated 16.02.2016, the Labour Court passed an award, in favour of the workman directing reinstatement into service with 50% back-wages with all other attendant benefits. The said award was once again challenged by W.P.No.14664 of 2016 and was dismissed. Once again W.A.No.2496 of 2021 was filed by the Management and W.A.No.1411 of 2021 was filed by the workman. Ultimately, the parties entered a settlement pending the Writ Appeals and the Writ Appeals were disposed of by recording the Joint Memorandum of Compromise. Accordingly, it is understood that as per the Joint

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Memorandum of Compromise, the workman agreed to the cessation of his employment with effect from 09.10.1993 and the Management agreed to settle the dues as agreed thereunder. Paragraph No.6 of the terms of settlement is extracted hereunder:-

> "6. Terms of settlement:
>
> a) Mr. P. Selvakumar hereby agrees to cessation of employment with effect from 09.10.1993.
>
> b) The Management agrees to pay a sum of Rs. 4,63,0 0/- (In words Rupees Four Lakhs Sixty Three Thousand only) to Mr. P. sJ1vakumar in addition to the deposit of Rs.1,33,817 /- (In words Rupees one Lakh Thirty Three Thousand Eight Hundred Seventeen only) that has already been deposited before the Labour Court pursuant to the order of Hon'ble High Court of Madras. This payment will be made within 14 days of this settlement being filed before the Hon'ble High Court in the pending Writ Appeals and the Writ Appeals being disposed of by the High Court in terms of this settlement.
>
> c) Mr. P. Selvakumar agrees to receive the above-mentioned amount in full and final settlement of all his claims against the Management.
>
> d) Mr. P. Selvakumar further affirms and states that he shall have no right or claim or entitlement for any further statutory or monetary dues or other benefits of whatsoever nature for the period he was in service or thereafter till his notional date of superannuation or after the notional date of superannuation.
>
> e) The Management agrees that the amount of Rs.1,33,817/- (In words rupees One Lakh Thirty Three Thousand Eight Hundred Seventeen only) deposited before the Labour Court along with accrued interest, if any can be withdrawn by Mr. P. Selvakumar and the Management shall have no objection to the same.

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f) Both parties agree to file a copy of this settlement . in the pending Writ Appeals before the Hon'ble High Court of Madras · and pray that this settlement be taken on record and substitute the a award of Labour Court in ID no. 341 of 1998.

g) Both parties agree that with this settlement neither party shall have any claim or right or entitlement against the other in future."

5. Thereafter, the present Writ Petition is filed claiming the Provident Fund dues as well as the Pension under the said scheme.

6. It is submitted by the learned counsel for the petitioner that after the Writ Appeal was disposed of by recording the Joint Memorandum of Compromise, the due application was made by the petitioner–workman for disbursal of the Pension as well as the Provident Fund.

7. The learned counsel appearing on behalf of the Employees Provident Fund Organisation (EPFO) would submit that the Provident Fund dues are not payable by the EPFO, since the 3rd respondent – Management is an exempted organization and they have their trust which has to pay the Provident Fund dues.

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8. As far as the payment of Pension, as per the Scheme is concerned, by a communication dated 08.05.2024, the EPFO has requested the petitioner herein to clarify the date of joining and also the date of relieving, since different dates are mentioned in different forms and therefore, they were not in a position to determine the eligibility and calculate the Pension payable and disburse the same.

9. The learned counsel appearing on behalf of the EPFO would submit that if the correct date of employment as well as the date of cessation of service are furnished, the claim of the workman will be duly considered in accordance with law and the amount, if any due, will be duly disbursed to the workman.

10. The learned counsel appearing on behalf of the Management would submit that the Employees Provident Fund Trust (EPFT) was not originally added as a party in the earlier round of litigation as well as in the present litigation. However, considering the fact that the matter has been amicably

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settled between the petitioner and the Management, any amount which has already been deducted and is found to be due will be paid to the workman. Since the matter is old, as the service itself ceased to have effect from the year 1993, some time would be required on behalf of the EPFT, to trace out the amount that is lying in the credit of the workman and to pay the same. In view of the long-drawn litigation, the claim of 12 % interest is also on the higher side.

11. I have considered the submissions made on either side and perused the material records of the case.

12. As far as the workman and the Management are concerned, the major issues between them have been settled. The only thing which is prayed in this Writ Petition is the payment of Provident Fund arrears and also the Pension under the Scheme.

13. Admittedly the Pension alone remains to be determined and paid as per the Scheme of the Employees Provident Fund Organisation. The orders of

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eligibility could not be passed and the amount if any due could not be paid, only because of the discrepancy concerning the date of joining and the date of relieving. On perusal of the Division Bench Judgment in W.A.No.1411 of 2021 dated 28.04.2023, it makes it clear that the dispute between the workman and the Management is disposed of, in terms of the Joint Memorandum of Compromise.

14. As per the Joint Memorandum of Compromise, the date of cessation of employment is categorically mentioned as 09.10.1993. Therefore, the Employees Provident Fund Organisation shall consider the date of cessation of service of the petitioner as 09.10.1993. In so far as the date of joining into service is concerned, though different dates are mentioned, from a perusal of the communication itself and from the appointment order, which is filed before this Court, which is issued by the 3rd respondent – Management dated 14.11.1980, it can be seen that the date of commencement of service is with effect from 10.11.1980. Therefore, the Employees Provident Fund Organisation shall take the date of commencement of service as 10.11.1980.

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15. Therefore, since the date of commencement of service as well as the cessation of service is now clarified by this Court, the same can be taken as such and the claim of the petitioner -workman can be processed by the 1st respondent -Organisation and orders in accordance with law, if he is eligible, under the appropriate Scheme shall be passed and the amount of Pension, if any found to be due shall be disbursed within a period of two months from the date of receipt of a copy of this order.

16. As far as the Provident Fund dues is concerned, the learned counsel for the respondents 2 and 3 produced a communication dated 23.09.2024, whereby, it can be seen that the employee and the employer contribution have been calculated, including the interest and a total sum of Rs.73,393/- was arrived at and the same has been credited to the Bank account of the petitioner. The same is recorded.

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17. With the above directions, this Writ Petition stands disposed of. No costs.

04.11.2024

Neutral Citation : No

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To
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Regional Provident Fund Office,
Bhavishya Nidhi Bhawan,
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Vellore, Tamil Nadu – 632 009.

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