

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2009

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THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.NO.35100 OF 2006  
(O.A.NO.4582 OF 1998)

V.Venkateswaran

.. Petitioner

Vs.

1.Government of Tamil Nadu,  
rep. By the Secretary to Government,  
Labour & Employment Department,  
Fort St. George, Chennai-600 009.

2.The Chief Inspector of Factories,  
Chepauk, Chennai-600 005.

.. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records relating to letter No.E3/33163/97, dated 13.11.1997 from the Chief Inspector of Factories, Chennai to the applicant and to quash the same.

For Petitioner : Mr.K.V.Srinivasaraghavan  
For Respondents : Mr.R.Neelakantan, GA

ORDER

Heard both sides.

2.This writ petition arose out of O.A.No.4582 of 1998 filed by the petitioner before the Tamil Nadu Administrative Tribunal. In view of the abolition of the Tribunal, it was transferred to this court and was renumbered as W.P.No.35100 of 2006.

3.The petitioner sought for the issuance of a writ of certiorari to call for the records relating to letter No.E3/33163/97, dated 13.11.1997 from the Chief Inspector of Factories, Chennai to the applicant and to quash the same.

4.The case of the petitioner is unfortunate. He is facing liability of repaying the amount paid towards backwages for the period from 5.10.1976 i.e the date on which he has compulsory retired till the date of his reinstatement on 4.12.85 to be

refunded to the State, which amounted to a sum of Rs.77,491.40. At the time when the petitioner filed OA No.4582 of 98, he was 68 years old and by now, he is 80 years.

5.The petitioner was working as Superintendent in the office of Chief Inspector of Factories. He was compulsory retired in terms of FR 56(d). The petitioner filed W.P.No.5124/79, challenging the order. The said writ petition was allowed. Thereafter, the State preferred W.A.No.324/85 and the same was also dismissed by the Division Bench. Thereafter, G.O.Ms.No.2369 Labour Dept., dated 7.11.85 was issued by the State, restoring the service of the petitioner without prejudice the State filing a SLP against the said order.

6.The State Government implemented the order in favour of the petitioner by G.O.Ms.No.145, Labour Department, dated 29.1.1986 and treated the period of absence from 6.10.1976 to 3.12.85 as duty for all purposes.

7.The first respondent State preferred an appeal against the Full Bench judgment in Civil Appeal No.352/85. The Supreme Court allowed the State appeal by its judgment, dated 27.2.1996. The said judgment has since been reported in Govt. of T.N. v. P.A. Manickam (1996) 8 SCC 519. The operative portion of the order found in the said judgment is found in para 14 to 16, which is as follows:

14. In CA No. 352 of 1985 this Court, when it granted special leave, noted that the respondent had attained the age of superannuation and it directed that he would be entitled to all the necessary benefits flowing from the impugned order and judgment irrespective of the result of the appeal. That direction must stand.

15. We are of the view that, in the other appeals, if the respondents have already been paid amounts in excess of what they should have received by reason of this judgment, such excess shall not be recovered.

16. The appeals are allowed accordingly. The judgments and orders under appeal are set aside and the writ petitions filed by the respondents dismissed. There shall be no order as to costs.

(Emphasis added)

8.The petitioner got retired after the normal age of superannuation. In respect of the petitioner's order, the State preferred an appeal before the Supreme Court belatedly. In the case of the petitioner, the State preferred an appeal before the Supreme Court in SLP No.1060 of 1986. When the matter came before the Supreme Court on 1.4.86, the Supreme Court passed the following order:

"Delay condoned.

Special leave granted. To be tagged on with CA 352/85. We are informed that the respondent has already been reinstated in service and is being paid his salary from the date of reinstatement. As regard his backwages, the same be paid to the respondent subject to adjustment. Preparation of record etc. dispensed with. Appeal will be heard on SLP paper books. Additional documents, if any, shall be filed within eight weeks from today."

9.The petitioner's SLP was renumbered as Civil Appeal No.1192/1986. After the disposal of the batch of cases in Government of Tamil Nadu Vs. P.A.Manickam and others reported in 1996 (8) SCC 519 (cited supra), the petitioner's case came up for final disposal on 3.4.97. In the case of the petitioner, the Supreme Court passed the following order:

"In view of the decision of this Court in Government of Tamil Nadu Vs. P.A.Manickam reported in 1996 (8) SCC 519, the appeal is allowed in terms of the above judgment and the impugned judgment of the High Court is set aside.

While granting special leave in this petition, this Court by its order dated 1.4.1986 noted that the respondent had already been reinstated in service and was being paid his salary from the date of re-instatement. As regard his back wages, this Court gave a direction that there should be paid to the respondent subject to adjustment. In view of this appeal being allowed, the amount of back wages paid to the respondent on his re-instatement shall be adjusted against his retirement benefits and pension etc. in an appropriate manner. No order as to costs."

10.It is pursuant to this order, the impugned order came to be passed by the respondents. The petitioner instead of seeking clarification from the Supreme Court for getting appropriate relief as done in the case of others, on a misconceived notion moved the tribunal with OA No.4582 of 1998 challenging the order of recovery which was based upon the order of the Supreme Court. Though the petitioner sought for an interim order, the tribunal merely ordered notice for admission.

11.On notice from the Tribunal, the first respondent has filed a reply affidavit, dated 3.9.98. It was stated that the proceedings instituted against the recovery will amount to disobeying the orders of the Supreme Court. Though the petitioner can complain that he was singled out in recovering the wages paid to him, such a grievance will have to be projected before the

Hon'ble Supreme Court. This court cannot grant any direction contrary to the directions issued by the Supreme Court.

12. Therefore, the writ petition is misconceived and must necessarily fail. Hence the writ petition stands dismissed. No costs.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

vvk

To

1.The Secretary to Government,  
Government of Tamil Nadu,  
Labour & Employment Department,  
Fort St. George, Chennai-600 009.

2.The Chief Inspector of Factories,  
Chepauk, Chennai-600 005.

1 cc To Mr.K.V.Srinivasa Raghavan, Advocate, SR.49738.

1 cc To The Government Pleader, SR.50055.

W.P.NO.35100 OF 2006

RSM(CO)  
RVL 08.10.2009

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