IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2015

CORAM

THE HON'BLE MR. JUSTICE D.HARIPARANTHAMAN

W.P.No.9941 of 2015

S.Venkatachalam ...Petitioner

Vs.

1. The Commissioner for Milk Production
   and Dairy Development,
   Chennai - 51.

2. The Deputy Registrar (Dairying),
   Dairy Development Department,
   Villupuram - 605 401.

3. The Secretary,
   Government of Tamil Nadu,
   Animal Husbandry and Dairy Development
   Department, Secretariat,
   Chennai - 9.

4. The Principal Accountant General
   (A & E), Tamil Nadu,
   No.261, Anna Salai, Chennai - 18. ...Respondents

(R3 suo motu impleaded vide order
dated 07.04.2015 in W.P.No.9941 of 2015)

(R4 suo motu impleaded vide order
dated 03.06.2015 in W.P.No.9941 of 2015)

Petition filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus directing the first and second respondents to pay interest at 18% for the belated payment of provisional pension and also to settle gratuity with interest from 01.02.1981 as per G.O.Ms.1921 Agriculture (MP-I) Department dated 08.11.1983.

For Petitioner : Mr.R.Rajendran

For Respondents : Mr.T.K.Ashok Kumar for R1 & R2
Mr.V.Jayaprakash Narayanan,
Spl. Govt. Pleader for R3
Mr.V.Vijay Shankar for R4

ORDER

The petitioner joined the Dairy Development Department on 18.07.1963. He worked in the said Department upto 31.01.1981. Subsequently, he was absorbed in the service of the Tamil Nadu Co-operative Milk Producers Federation from 01.02.1981. He retired from service on 30.06.1995. As per the terms in G.O.Ms.No.1921 Agriculture (MPI) Department dated 08.11.1983, the employees like the petitioner who got absorbed in the Tamil Nadu Co-operative Milk Producers Federation from the Government service are entitled to pension only on their retirement for the service rendered in the Government. The petitioner should have been paid pension from 01.07.1995.

2.Even though a departmental action was pending against the petitioner, he was permitted to retire without prejudice to the departmental action and therefore, he should have been paid provisional pension. But the petitioner was not even paid provisional pension. Non-payment of provisional pension has deprived the livelihood of the petitioner.

3.However, the petitioner was sanctioned provisional pension only on 18.06.2012 and the actual payment of arrears of provisional pension of Rs.5,72,970/- was made on 13.09.2013, after a delay of 18 years and two months. Hence the petitioner has filed this writ petition seeking for a direction to pay 18% interest for the belated payment of provisional pension and also to settle the gratuity with interest.

4.When the matter came up for admission on 07.04.2015, taking into account the nature of the claim made and also the age of the petitioner, being 78 years, this Court passed the following order:

> "The petitioner is aged 78 years. He joined the Dairy Development Department on 18.07.1963 and he worked in the said department upto 31.01.1981. Subsequently, he was absorbed in the service of Tamil Nadu Cooperative Milk Producers' Federation from 01.02.1981. While the service rendered in Dairy Development Department is a pensionable

one, the service rendered in Tamil Nadu Cooperative Milk Producers' Federation is not a pensionable service. The petitioner retired from service on 30.06.1995. Though he got absorbed in Tamil Nadu Cooperative Milk Producers' Federation, he would get pension for the service rendered in the Dairy Development Department only after retirement.

2. According to the petitioner, he was not paid pension on his retirement due to some charges pending against him. He was sanctioned provisional pension only on 18.06.2012 and arrears amounting to Rs.5,72,970/- was paid on 13.09.2013 after a delay of 18 years and two months. According to the petitioner, he should be paid interest for the belated payment. The interest has to be paid only by the Government. Hence, the Secretary, Government of Tamilnadu, Animal Husbandry and Dairy Development Department is suo motu impleaded as party to the writ petition.

Post for orders on 15.04.2015."

5.Counter affidavit is filed by the third respondent seeking to dismiss the writ petition.

6.Heard the submissions made by both sides.

7.It is stated in the counter affidavit that the terminal benefits are withheld due to audit objection and initiation of surcharge proceedings. But, however, it is stated that both the audit objection and the surcharge proceedings were dropped by the Managing Director, Tamil Nadu Co-operative Milk Producers Federation Limited in his proceedings dated 12.02.2013. In any event, even if there is audit objection and surcharge proceedings, the same cannot be a reason to deny the provisional pension. The petitioner was admittedly permitted to retire. Hence the provisional pension shall be settled immediately on his retirement on 30.06.1995.

8.When the petitioner retired on 30.06.1995, he was neither paid pension nor provisional pension. The provisional pension amounting to Rs.5,72,970/- was admittedly sanctioned on 18.06.2012 and the same was paid only on 13.09.2013. The Division Bench of this Court in Government of Tamil Nadu Vs. M.Deivasigamani (2009(3) MLJ 1), has held that the Government employee is entitled to interest for belated payment of terminal benefits even if the rules do not provide for payment of interest, following the decision of the Apex Court in S.K.Dua Vs. State of Haryana ((2008) 3 SCC 44).

9.It is relevant also to take note of the proceedings of the second respondent in R.C.No.634/12/A dated 26.12.2014 to the Principal Accountant General, by which, proposal was sent for full regular pension. It is relevant to extract the following paragraphs:

> "......By going through the above points of clarification the following issues have clearly emerged.
>
> 1.Thiru.S.Venkatachalam after serving in Govt. dept from 19.07.1963 to 31.01.1981 had worked as employee of Co-ops body (TCMPF) on absorption and retired as an employee of Co-op institution not as a govt. employee.
>
> 2.The Departmental proceedings (surcharge proceeding) initiated against him under the provision of Co-op Act and rules were disposed as per the provision of the TNCS Act under the administrative supervision of the functional register of milk co-ops/CMPDD who has been empowered to administer the co-op act rules in respect of milk co-ops in the state.
>
> 3.The CMPDD/head of the dairy dev. Dept and pension sanctioning authority has clearly indicated in his ref.No.6099/B5/14 dt. 26.05.2014 that Thiru.S.Venkatachalam has no dues to govt/and all the departmental proceedings have been disposed of with no dues to co-op institutions.
>
> 4.The M.D., the employer of Thiru.S.Venkatachalam for the service in the TCMPF had settled his terminal benefits in full after confirming his retirement in the ref 7th cited for the service rendered in TCMPF 01.02.1981 to 30.06.1995 rendered from 1.2.1981 to 30.06.1995.
>
> It is hoped that the above points would be sufficient to enlighten the AG (A & E) for the queries raised for the admittance of pension proposals of Thiru.S.Venkatachalam.
>
> As such, I am herewith reforwarding the pension proposals of Thiru.S.Venkatachalam in the third time with furnishing necessary explanation to satisfy the query raised by the AG (AE) to enclose the Govt. order for the disposal of charges framed by the Co-op body for your kind perusal and request you to admit the pension proposals and to issue necessary authorisation of pension and PPO along with an order to release the DCRG of the pensioner at an early date."

10.Further, the petitioner is not paid the DCRG payable to him for the service rendered in the Government. As far as the belated payment of DCRG, the Tamil Nadu Pension Rules itself provides for payment of interest. Hence the petitioner shall be paid gratuity with interest as per Tamil Nadu Pension Rules. In these circumstances, the The Principal Accountant General (A & E), Tamil Nadu, No.261, Anna Salai, Chennai - 18 is suo motu impleaded as fourth respondent and the writ petition is disposed of with the following directions:

(i)Respondents 1 and 2 are directed to pay the DCRG with interest as provided under the Tamil Nadu Pension Rules, for the service rendered by the petitioner in the Government, within a period of twelve weeks from the date of receipt of a copy of this order.

(ii)Respondents 1 and 2 are directed to pay interest at the rate of 10% for the belated payment of provisional pension, within a period of twelve weeks from the date of receipt of a copy of this order, as per the Division Bench judgment of this Court referred to above.

(iii)The Principal Accountant General, Chennai is directed to authorise regular pension pursuant to the proposal of the second respondent in R.C.No.634/12/A dated 26.12.2014 within a period of three weeks from the date of receipt of a copy of this order.

No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner for Milk Production
   and Dairy Development,
   Chennai - 51.

2. The Deputy Registrar (Dairying),
   Dairy Development Department,
   Villupuram - 605 401.

3. The Secretary,
   Government of Tamil Nadu,
   Animal Husbandry and Dairy Development Department,
   Secretariat,
   Chennai - 9.

4. The Principal Accountant General
   (A & E), Tamil Nadu,
   No.261, Anna Salai, Chennai - 18.

1 CC to Mr.R.Rajendran, Advocate SR.No. 26248

1 CC to Mr.T.K.Ashok Kumar , Advocate SR.No. 26296

1 CC to the Government Pleader, SR.No. 26523

KK (CO)
PSI (14.07.2015)