IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No. 2102 of 2015

E. Manickam .. Petitioner

Versus

1. The Commissioner
   Corporation of Chennai
   Rippon Building
   EVR Salai, Chennai - 600 003

2. The Superintending Engineer
   Bridges Department
   Corporation of Chennai
   Chennai - 600 003 .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondents herein to pay interest at the rate of 12% per annum on the withheld DCRG amount from the date on which it was withheld till the date of actual payment of the same and also interest at the rate of 12% per annum on the release of 25% of petitioner's withheld pension.

For Petitioner : Mrs. Rita Chandrasekaran
For Respondents : Mr. V.C. Selvasekaran

ORDER

The writ petition has been filed by the petitioner, a Senior Citizen, aged about 75 years. He retired on 31.07.1998 as Executive Engineer as per the proceedings dated 31.07.1998 of the first respondent. On his retirement, his pension was fixed at Rs.6,138/- and DCRG of Rs.2,34,944/- was sanctioned to him, however, a sum of Rs.58,726/- was deducted from the DCRG of the petitioner towards a probable pecuniary loss that would be caused to the respondents corporation and he was paid only Rs.1,76,208/- out of Rs.2,39,944/- as per the proceedings dated 05.12.1998 of the first respondent. Thereafter, a further 25%

of the amount was deducted from the DCRG payable to the petitioner and he was actually paid only Rs.1,32,156/-. Thus, a total sum of Rs.1,02,788/- had been withheld by the first respondent. As regards pension, even though a sum of Rs.6,138/- was sanctioned, the petitioner was permitted to draw only a sum of Rs.4,603/- on the basis of an audit objection for the year 1995-1996. The audit objection was to the effect that the arrears paid to the petitioner for acquiring Master Degree in Town Planning and the pay fixation arrears had been claimed together. According to the petitioner, he was sponsored by the Corporation of Chennai for pursuing Master Degree in Town Planning and he completed it during the year 1983. In other words, the petitioner was granted leave for undergoing the said course and therefore, he is eligible for getting the advanced increment on the basis of GO Ms. No.2441, RD & LA Department dated 13.11.1973 and his pay has been properly fixed. The petitioner would submits that the withholding of 25% of the pension and more than 25% of the DCRG payable to him have been unceremoniously withheld by the respondents herein. The petitioner is no way responsible for the alleged irregularities pointed out by the audit team. The withholding of the amount after his retirement amount to imposition of punishment without any notice or enquiry. The petitioner has therefore made many representations to the respondents and ultimately, by proceedings dated 16.10.2014 of the Deputy Commissioner (R&D) General Department (Pension Section) Corporation of Chennai,the petitioner was sanctioned the payment of withheld DCRG and withheld 25% of the pension and it was paid to him on 17.11.2014 with arrears from 01.08.1998. According to the petitioner, there was an inordinate delay in sanctioning and paying the withheld terminal benefits for which the respondents are liable to pay interest. In this connection, the petitioner has submitted a representation dated 25.11.2014 to the respondents seeking to pay interest at the rate of 12% per annum on the amount of withheld DCRG from the date on which the amount was withheld till the date of actual payment together with the delayed payment of 25% of the withheld pension. The representation dated 25.11.2014 has been received by the respondents and a reply dated 29.12.2014 was sent by the second respondent explaining the circumstances which led to the delay in paying the withheld DCRG and pension. According to the petitioner, the delay in disbursement of the amount towards DCRG and pension is attributable on the part of the respondents for which he cannot be penalised. As per the various orders of the Government, if there is delay in settling the terminal benefits, either in full or in part, the government servant is entitled to payment of interest. Therefore, the petitioner has come up with this writ petition.

2. The learned counsel for the petitioner would contend that the delay in settling the terminal benefits is attributable on the part of the respondents and therefore they are liable to pay interest for the delayed payment. In this context, the learned counsel for the petitioner placed reliance on the decision of the Honourable Supreme Court in (Dr. Uma Agarwal vs. State of U.P. and another) 1999 (3) Supreme Court Cases 438 wherein it was held that the process of payment ought to have been initiated two years in advance of the retirement of the petitioner therein, but such a process has been initiated four years after her retirement. The Honourable Supreme Court therefore held that such delay cannot be excused. While holding so, the Supreme Court itself has quantified the payment payable towards interest at Rs.1,00,000/- in that case. The learned counsel for the petitioner also would contend that as per Rule 45-A of the Tamil Nadu Pension Rules, the petitioner is entitled for payment of interest for the delayed disbursement of pension.

3. A counter affidavit has been filed by the second respondent contending inter alia that due to objection raised by the audit team, a part of the amount payable to the petitioner towards DCRG and pension have been withheld. When an objection has been raised by the audit team, the respondents cannot be expected to pay the entire amount payable to the petitioner. In any event, only on the basis of the audit objection raised, the amount have been withheld and in such an event the petitioner is not entitled for payment of interest.

4. I heard the learned counsel for both sides and perused the materials placed on record. Admittedly, the petitioner retired on 31.07.1998 and after his retirement, the respondents have withheld 25% of the payment payable towards DCRG and 25% of the pension payable to him purportedly on the basis of an audit objection. Ultimately, such amount withheld from the petitioner has been paid to him on 17.11.2014 viz., after a period of 16 years from the date of his retirement. In such circumstances, whether the department is liable to pay interest for the delayed settlement of the terminal benefits or not is the question that arise for consideration in this writ petition. To consider the same, the following decisions would be relevant to be quoted.

5. The Honourable Supreme Court in the case of (Dr. Uma Agarwal vs. State of U.P. and another) 1999 (3) Supreme Court Cases 438, which was relied on by the learned counsel for the petitioner, held that when there is delay in disbursement of the pensionary benefits, the department is liable to pay interest thereof. In Para No.5 to 7 of the said case, it was held as follows:-

"5. If rules/instructions which prescribe time schedule for settling of retirement dues, are followed strictly, much of litigation can be avoided and retired government servants would not feel harassed. Pension is not a bounty but right of a government servant. Government is obliged to follow rules. Delay in settling retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too, there is a prescribed procedure. This indeed is unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind time schedule prescribed in the rules/instructions, apart from other relevant factors applicable to a case.

6. The present case is a clear example of inexcusable department delay. Respondents contend that letters were sent to the petitioner after her retirement seeking some information for settling her retirement dues but this is denied by the petitioner. Even if it is assumed that such letters were sent, this cannot be an excuse for lethargy of the department because rules/instructions provide for initiation of process much before retirement. The exercise which was to be completed much before retirement was in fact started long after petitioner's retirement.

7. This is a fit case for awarding interest to the petitioner. It is however not necessary that the matter should go back to the Government for computation of interest. Instead, on the facts of this case, interest is quantified at Rs.1 lakh. The same shall be paid to the petitioner within two months."

6. Similarly, In the case of (D.D. Tewari (dead) through legal representatives vs. Uttar Haryana Bulivitran Nigam Limited and others) (2014) 8 Supreme Court Cases 894 the Honourable Supreme Court held that denial of interest from the date of entitlement till the date of actual disbursement would take away the valuable rights of the retired government servant. It was reiterated in that decision that pension and gratuity are not bounty to be distributed by Government to its employees on their retirement, but are valuable rights and property in its hands and any culpable delay in settlement and disbursement thereof is to be visited with penalty of payment of interest.

7. In the case of (State of Kerala and others vs. V.

Padmanabhan Nair) (1985) 1 Supreme Court Cases 429, it was held that prompt payment of retirement benefits is the duty of the Government and any failure in that direction will entail the Government liable to pay penal interest to the government servant. It was further held that gratuity should be paid on the date of retirement or on the following day and pension should be paid at the expiry of the following month. In that case, the Supreme Court, finding that there was delay in disbursement of the terminal benefits, directed the respondents therein to disburse the pensionary benefits with interest at the rate of 6% per annum.

8. Applying the ratio laid down by the Honourable Supreme Court in the above cases to the facts of this case, there is a delay of around 16 years in settling the terminal benefits payable to the petitioner. Such a delay is not attributable on the part of the respondents. It is contended by the respondents that the delay has occurred due to an audit objection. Such a contention on the part of the respondents cannot be countenanced. This Court is of the view that the delay on the part of the respondents in settling the withheld portion of the DCRG and pension payable to the petitioner for about 16 years purportedly due to audit objection cannot be accepted. Further, Rule 45-A of the Tamil Nadu Pension Rules as amended from 20th February 1995 provides for granting interest at the rate of 12% per annum if the terminal benefits are delayed. Therefore, I am of the view that the petitioner is entitled for payment of interest for the belated disbursement of the terminal benefits at the rate of 12% per annum.

9. In the result, the writ petition is allowed and a Mandamus is issued to the respondents directing them to pay interest at the rate of 12% per annum for the belated disbursement of 25% of DCRG and Pension payable to the petitioner from the date of his retirement till 17.11.2014, the date on which the amount thereof have been disbursed to the petitioner. No costs. Having regard to the fact that the petitioner is aged 75 years, the respondents are directed to pay the interest as indicated above to the petitioner within a period of two months from the date of receipt of a copy of this order.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Commissioner
   Corporation of Chennai
   Rippon Building
   EVR Salai, Chennai - 600 003

2. The Superintending Engineer
   Bridges Department
   Corporation of Chennai
   Chennai - 600 003

+2 CC to Mr. Aiyar & Dolia, Advocate Sr.No.45317

WP No. 2102 of 2015

CA (CO)
MD : 22/10/2016