

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2016

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.37792 of 2015

P.Balasubramanian

... Petitioner

Vs.

- 1 The Deputy Registrar of Co-operative Societies (Housing)
Coimbatore Region,
"Chinthamani", Coimbatore North,
Coimbatore-641 002.
2. No.SLM.HSG. 75. Dharapuram Taluk
Co-operative Housing Society Ltd.,
rep. by its President,
No.8, Anna Nagar,
Dharapuram-638 656
Tiruppur District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to pay the terminal benefits of the petitioner amounting to Rs.15,35,000/- along with interest at the rate of 12% per annum from 30.09.2012 till the date of payment.

For Petitioner : Mr.K.Premkumar

For Respondents : Mrs.T.Girija,
Government Advocate for R1
Mr.L.P.Shamugha Sundaram for R2.

ORDER

By consent, the writ petition is taken up for final disposal.

2. The present writ petition has been filed seeking a Mandamus directing the respondents to pay the terminal benefits of the petitioner amounting to Rs.15,35,000/- along with interest at the rate of 12% per annum from 30.09.2012 till the date of payment.

3. It is the case of the petitioner that the petitioner was working as Secretary of No.SLM HSG.75 Dharapuram Taluk Co-operative Housing Society Ltd., with effect from 01.07.1988 and he was permitted to retire from service on attaining superannuation on 30.09.2012. The second respondent Management submitted a proposal dated 23.08.2012 to the first respondent seeking permission to allow the retirement and for the payment of retirement benefits to the petitioner. Consequent to the above proposal, the first respondent, vide proceedings made in Na.Ka.No.1863/2012/Na.Sa, dated 29.09.2012, permitted the petitioner to retire from service on 30.09.2012 and directed the second respondent Management to submit the final report regarding the payment of retiral benefits. Based on the order of the first respondent, the second respondent relieved the petitioner from his service in the afternoon of 30.09.2012 and on the date of retirement, the terminal benefits payable by the management to the petitioner is detailed as under:

a	Provident Fund	Rs. 11,11,150.00
b	Gratuity	Rs. 4,78,492.00
c	Surrender of Leave Salary	Rs. 2,40,144.00
	Total	Rs. 18,39,786.00
	Amount paid to the petitioner at the time of retirement	Rs. 3,04,786.00
	Balance Payable to the petitioner	Rs. 15,35,000.00

4. Instead of paying the above balance amount of terminal benefits, the then Special Officer/Management of the second respondent society, issued deposit receipts dated 29.09.2012 for a sum of Rs.15,35,000/- without interest, but payable within 36 months. The above period of agreement for the payment of the balance terminal benefits of Rs.15,35,000/- was due on 29.09.2015. Hence, on expiry of 36 months, the petitioner contacted the second respondent in person and requested to refund of the terminal benefits and submitted a written claim of the above said amount, on 27.10.2015 and a copy of the above claim was addressed to the first respondent.

5. It is further stated that the second respondent Management has also admitted the entire claim of the petitioner by letter dated 06.11.2015, but declined to pay the same stating that the financial position of the society is not conducive to pay the terminal benefits to the petitioner. It

is also submitted that refusal to pay the terminal benefits by the respondents even after lapse of four years from the date of his retirement, is contrary to law and against the fundamental rights under Article 21 of the Constitution of India. Hence, left with no other alternative, the petitioner has come up with the present writ petition for the relief set out earlier.

6. I have heard the learned counsel appearing for the petitioner and the learned counsel who takes notice for the respondents.

7. When the matter is taken up for disposal, the learned counsel for the petitioner submitted that the petitioner had retired from service on 30.09.2012 and almost four years have elapsed from the date of his retirement. Hence, he prays for a direction to the respondents to pay the amount of Rs.15,35,000/- along with interest at 9% p.a. till the date of payment.

8. In support of his contention, the learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in (2014) 8 Supreme Court Cases 894 in D.D.TEWARI (DEAD) THROUGH LEGAL REPRESENTATIVES V. UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED AND OTHERS, wherein it has been held that denial of interest from date of entitlement till date of payment has resulted in miscarriage of justice and paragraph Nos.6 to 8 of the order reads as under:

"6. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned Single Judge after adverting to the relevant facts and the legal position has given a direction to the respondent employer to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgment referred to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.

7. It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are

entitled in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972. Having regard to the facts and circumstances of the case, we do not propose to do that in the case in hand.

8. For the reasons stated above, we award interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of entitlement till the date of actual payment. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date of the amount falls due to the deceased employee. With the above directions, this appeal is allowed."

9. He has also relied upon the decision of the Hon'ble Apex Court in (2008) 3 Supreme Court Cases 44 in S.K.DUA V. STATE OF HARYANA AND ANOTHER, wherein paragraph 14 of the order reads as under:

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in the absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of 'bounty' is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

10. Learned counsel for the second respondent has filed the counter stating that the second respondent has admitted the claim of the petitioner. But due to cumulative loss to the tune of Rs.217.36 lakhs for the past 10 years, the Society is unable to settle the terminal benefits. It has further stated that the petitioner made a representation before the second respondent dated 27.10.2015 and the same was disposed by the second respondent on 06.11.2015 and hence the question of Mandamus to dispose of the representation dated 27.10.2015

does not arise. If at all the petitioner is aggrieved by the said order, he may file revision under Section 153 of the Act before the Registrar of Co-operative Societies (Housing) Chennai.

11. In my considered opinion, sine the respondents admitted their liability to pay the terminal benefits of Rs.15,35,000/- to the petitioner, there is no need for this Court to direct the petitioner to file a revision before the Registrar of Co-operative Societies (Housing). Hence, by keeping the dictum laid down in the above judgment by the Hon'ble Supreme Court of India, this Court direct the respondents to pay the terminal benefits at 9% interest, since the petitioner is entitled for interest for belated payment. Since it is represented by the learned counsel for the respondents that the Society is not in a position to pay the entire terminal benefits as single payment due to its cumulative loss, the respondents are permitted to pay the terminal benefits with 9% interest in ten installments commencing from 01.11.2016.

12. With the above direction, the present writ petition is disposed of. No costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

- 1 The Deputy Registrar of Co-operative Societies (Housing)
Coimbatore Region,
"Chinthamani", Coimbatore North,
Coimbatore-641 002.

- 1 cc to Mr.K. Premkumar, Advocate, Sr. 56846
- 1 cc to Mr.L.P.Shamugha Sundaram, Advocate, Sr. 5693

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EV (CO)
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