

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.34671 of 2016

M.Ramaswamy

... Petitioner

vs.

The Managing Director,
Tamilnadu Housing Board,
493, Anna Salai, Nanthanam,
Chennai-600 035.

... Respondent

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus, directing the Managing Director, TNHB, the respondent herein to grant interest to the petitioner on the belated disbursement of retiral benefits namely (i)DCRG, (ii)Encashment of Earned Leave, (iii)Encashment of unearned leave on private affairs, (iv)all other belated disbursement made to the petitioner with 18% simple interest or 12% Compound interest as contemplated in G.O.Ms.No.122, Finance (Pension) Department, dated 20.02.1995 and as ordered in identical cases by this Court and disburse all the accrued arrears on the above benefits within a short date that may be fixed by this Court.

For Petitioner : Mr.K.Rajkumar
For Respondent : Mr.V.Anandhamurthy

ORDER

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

2.This writ petition has been filed by the petitioner, praying for a Writ of mandamus, directing the respondent herein to grant interest to the petitioner on the belated disbursement of retiral benefits namely (i)DCRG, (ii)Encashment of Earned Leave, (iii)Encashment of unearned leave on private affairs, (iv)all other belated disbursement made to the petitioner, with 18% simple interest or 12% Compound interest as contemplated in

G.O.Ms.No.122, Finance (Pension) Department, dated 20.02.1995 and to disburse all the accrued arrears on the above benefits within a time limit.

3.It is stated by the petitioner that he joined as Assistant Engineer in Tamil Nadu Housing Board on 15.03.1969 and thereafter, he was promoted to the post of Assistant Executive Engineer on 15.02.1972. During the year 1991, he was promoted as Executive Engineer with retrospective effect from 1986. Subsequently, he came to be promoted to the post of Superintending Engineer on 03.04.1998 and he was deputed to Police Housing Corporation as Superintending Engineer. The petitioner was ordered to hold the post of Chief Engineer on an in-charge basis from January, 2000 till his retirement, in the Tamil Nadu Police Housing Corporation. The petitioner reached the age of superannuation on 28.02.2001 and he was allowed to retire from service, without prejudice to the four disciplinary proceedings pending against him. However, the petitioner was not paid with the retiral benefits on the ground of pendency of four disciplinary proceedings. Subsequently, all the four departmental proceedings against the petitioner reached finality and all of them have been dropped by the Board as well as by the Government. According to the petitioner, once the charges are dropped, the petitioner is deemed to have not faced any disciplinary proceedings on the date of retirement. As such, on his retirement, he is entitled to the following retiral benefits_

- (1)Death-cum-retirement Gratuity,
- (2)Commutation of pension
- (3)Encashment of earned leave
- (4)Provident Fund
- (5)Special Provident Fund
- (6)Encashment of unearned leave on private affairs

The Board has given the provident fund, special provident fund, in its due time. The petitioner did not claim the commuted value of pension. But, the DCRG, encashment of earned leave and the encashment of unearned leave on private affairs have not been disbursed in its due time. The petitioner is entitled to the above arrears on the date of retirement on 28.02.2001. But, three of the above benefits have been disbursed belatedly on various dates as following

Sl.No	Name of retiral benefits and its amount	Date of due	Date of disbursement	Delay
1.	DCRG-Rs.3,45,485/-	28.02.2001	June, 2012	11 years
2.	Encashment of earn leave Rs.1,87,944/-	28.02.2001	March, 2007	6 years

Sl.No .	Name of retiral benefits and its amount	Date of due	Date of disbursement	Delay
3.	Encashment of unearned leave on private affairs - Rs.70,479/-	28.02.2001	June, 2012	11 years

The above delay has caused serious prejudices to the petitioner as he has been paying exorbitant interest to the creditors for the loan received by him. Almost 11 years had gone in settling the retiral benefits to the petitioner by the Board. Hence, the same has to be suitably compensated by awarding interest for the delay caused by the respondent to disburse the retiral benefits for the false charges levelled against the petitioner. In this regard, the petitioner has made representations to the respondent claiming interest for the above said three benefits on 02.09.2011 and 12.07.2012, by enclosing the copy of the calculation. But, the same were not considered by the respondent. Hence, the petitioner has come forward with the present writ petition.

4. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials available on record.

5. It is submitted by the learned counsel for the petitioner submitted that in an identical situation, in the decision reported in (2010) 7 MLJ 577 [P.Nagarathna Pandian Vs. M.D., TNHB], a learned Single Judge of this Court has directed the Housing Board to pay the terminal benefits along with interest to the employee. The relevant portion in the said decision reads as follows

"11. The reason stated by the respondents that only due to the pendency of the charge against the petitioner, payment of terminal benefits was delayed, cannot be accepted as the charge, which was found not proved was ultimately dropped. The delay in completing the disciplinary proceedings has already caused mental agony to the petitioner after reaching the age of superannuation. The retirement benefits payable as on 30.11.1998 was delayed for about six years for which the petitioner cannot be blamed. It is not the case of the respondents that the disciplinary proceedings was delayed at the instance of the petitioner. From the perusal of the typed set of papers filed, it is evident that the

enquiry officer submitted his report stating that the charge was not proved. The said Enquiry Officer's report was submitted as early as on 31.08.1999. Even assuming that the pendency of the charge was not the reason for not paying the terminal benefits, there was unreasonable delay in dropping the charge, though the delay is explained in the counter affidavit. For no fault on the part of the petitioner, petitioner cannot be penalised by denying interest for the belated payment of retirement benefits.

12. In view of the above findings and decisions of the Supreme Court and of this Court, the writ petition is allowed and the impugned order is set aside. The second respondent is directed to pay the statutory interest for the gratuity amount, provident fund, special provident fund. For commutation of pension and surrender of earned leave, the 2nd respondent is bound to pay interest for the belated payment as per the Government Order referred above. The 2nd respondent is directed to comply with this order within a period of six weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed."

The dictum laid down in the above cited case is squarely applicable to the present facts of the case also. Hence, following the same, similar direction could be given to the respondent in the present writ petition also.

6. Accordingly, the respondent-Board is directed to pay the statutory interest to the petitioner on the belated disbursement of retiral benefits namely (i) DCRG, (ii) Encashment of Earned Leave, (iii) Encashment of unearned leave on private affairs, (iv) all other belated disbursement made to the petitioner, as contemplated in G.O.Ms.No.122, Finance (Pension) Department, dated 20.02.1995 and to disburse all the accrued arrears on the above benefits, within a period of eight weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of.

Sd/-
Assistant Registrar

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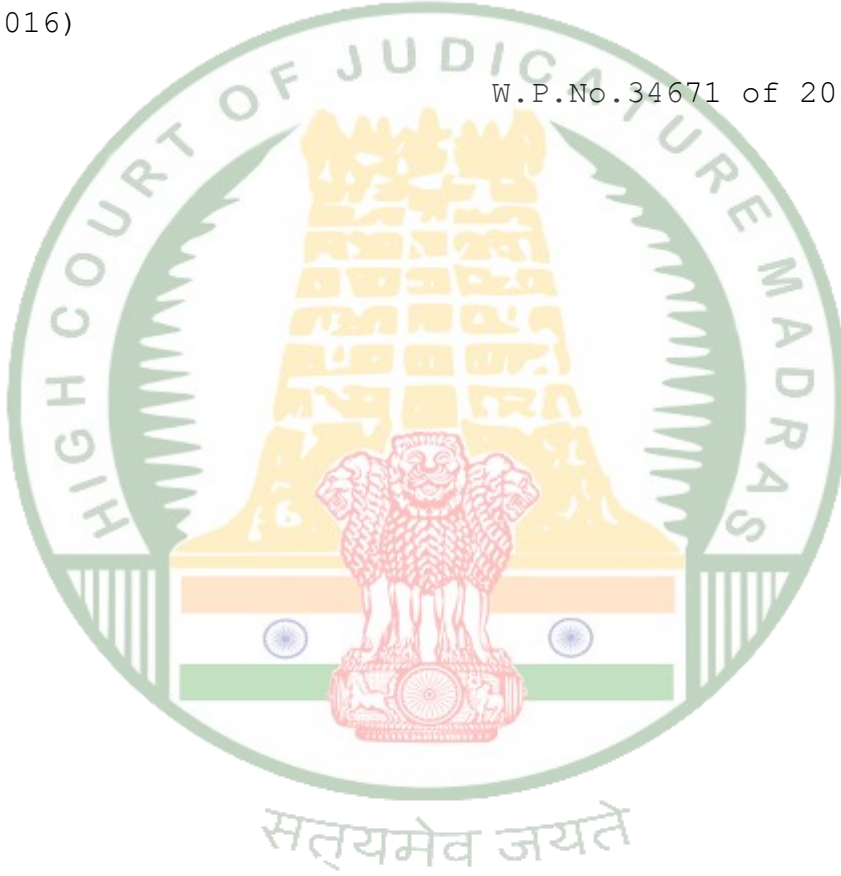
Sub Assistant Registrar

To
The Managing Director,
Tamilnadu Housing Board,
493, Anna Salai, Nanthanam,
Chennai-600 035.

+1cc to Mr.K. Rajkumar, Advocate, S.R.No.56337
+1cc to Mr.V. Annadha Moorthy, Advocate, S.R.No.56503

nr(CO)
md(23/11/2016)

W.P.No.34671 of 2016



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