BEFORE THE MADURAI BENCH OF MADRAS HIGH COUT

DATED : 01.12.2016

CORAM :

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P(MD)No.22988 of 2016

S.Duraikannu ...Petitioner

vs.

The Managing Director,
Tamilnadu State Transport Corporation
Coimbatore Limited,
37, Mettupalayam Road,
Coimbatore, ...Respondent

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the respondents to pay the interest of the retirement benefits to the petitioner in view of the representation dated 03.11.2016.

For Petitioner : Mr.S.Royce Immanuel
For Respondent : Mr.K.Sathiyasingh

ORDER

'A retired Government official is sensitive to delay in drawing monetary benefits. And to avoid posthumous satisfaction of the pecuniary expectation of the superannuated public servant not unusual in Government', it has become necessary to issue directions, in several cases for early payment of those dues.--- Krishna Iyer, J. in the case of *State of Mysore v. C.R. Sheshadri and Ors. reported in 1974-I-LLJ-301 (SC)*.

2.This writ petition has been filed seeking a direction to the respondents to pay interest on the retirement benefits payable to the petitioner based on the representation of the petitioner dated 03.11.2016.

3.It is the case of the petitioner that originally, he was retired from service on 30.06.2013 on attaining the age of superannuation. Since the petitioner did not receive retirement benefits, he filed a writ petition in W.P(MD)No.11047 of 2016 seeking direction to the respondents to settle his retirement benefits. This Court by order dated 23.06.2016 disposed of the said writ petition and issued direction to the respondent Corporation to pay the amount due to the petitioner in 12 equal monthly installments commencing from 04.08.2016 with 6% interest and in case of delay in making installments, the interest payable would be 18% for the delayed period. It is pointed out that as the payment was not made so, but made belatedly, the respondent Corporation is liable to pay interest.

4.The learned counsel for the petitioner relied upon the following provisions of law and the reported decisions and contended that if the payment is not duly made in accordance with the time prescribed, under the Law, then the petitioner is entitled to claim interest.

5.It is appropriate to consider those provisions and decisions. Pointing out that it is imperative for the respondents:-

(a) to keep in mind the time schedule prescribed in the rules/instructions;

(b) to initiate various steps towards grant of retirement benefits well in advance prior to the date of retirement;

(c) to realise that there is liability even to pay compound interest and

(d) to pay interest even in the absence of express provisions, the following decisions are relied upon:-

(i)In the case of *Government of Tamil Nadu vs. M. Deivasigamani* , reported in *2009 (3) MLJ 1*, this Court has held as follows:-

"The contention of the appellant that as per the Government norms, interest can be paid only on Death-cum-Retirement Gratuity, in case of delay and the same cannot be awarded to any other retiral benefits, *is not tenable*, in view of the decision of the Supreme Court in S.K.Dua v. State of Haryana reported in 2008 (3) SCC 44. "

(ii)*In the decision in* Uma Agrawal vs State Of U.P. And Anr. reported in 1999 (3) SCC 438, the Hon'ble Supreme Court held as under:-

"We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various Governmental Departments of their duties in initiating various steps at least two years in advance of the date of retirement. If the Rules/instructions are followed strictly much of the litigation can be avoided and retired Government servants will not feel harassed because, after all, grant of pension is not a bounty but a right of the Government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring ever in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired Government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the Rules/instructions apart from other relevant factors applicable to each case."

(iii)In the case of *Vijay L. Mehrotra v. State of U.P. & Ors reported in JT 2000 (5) SC 171*, the Hon'ble Supreme Court had granted interest on, inter alia, the delayed payment of the *leave encashment amount* at the rate of 18% per annum. The relevant portion of the said Supreme Court decision is as under:-

"2. The appellant retired from service on 31st August, 1997. From the response, filed by the respondent, it is clear that most of the payments of the retiral benefits to her were made long after she retired on 31st August, 1997. The details of the payments so made are as under:

S.No.	Particulars	Amount Paid	Date
(i)	GPF 90%	Rs.1,80,899.00	27.11.1997
(ii)	GPF 10%	Rs. 20,751.00	25.04.1998
(iii)	GIS	Rs. 13,379.00	27.02.1998
(iv)	Encashment of leave	Rs. 41,358.00	27.09.1998
(v)	Arrears of pay	Rs. 15,495.00	27.09.1998
(vi)	Gratuity	Rs.1,09,753.00	05.12.1998
(vii)	Commuted pension	Rs. 20,484.00	05.12.1998
(viii)	Detained amount	Rs. 45,000.00	05.11.1999

6.The further contention of the learned counsel for the petitioner is that even in the absence of rules/administrative instructions or Government orders, the petitioner is entitled to interest based upon the provisions of the constitution and in order to support the proposition, the following decision is relied upon:-

(i) In *S.K. Dua vs State Of Haryana & Anr* reported in 2008 (3) SCC 44, the Hon'ble Supreme Court has held as follows:-

"...........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 absence 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 ...."

7.The statutory rules providing for payment of interest is under Rule 45-A of the Tamil Nadu Pension Rules, 1978 and Section

8 of the Payment of Gratuity Act and those reference are extracted for easy reference.

"[(1) Interest at the rate of eight per cent per annum shall be payable on the death-cum-retirement gratuity paid beyond (a) period of two months from the date of retirement of a Government Servant.]
[Provided that on and from the 12th June 1987, the rate of such interest shall be as follows:

(a) seven per cent per annum beyond a period of three months and upto one year; and

(b) ten per cent per annum beyond a period of one year:

Provided further that on and from 20th February 1995, the rate of such interest shall be twelve percent per annum (compounded annually): Provided also that on and from 1st April 2004, the rate of such interest shall be at the rate of interest payable, on General Provident Fund during the year of retirement of the Government servant (compounded annually): Provided also that no such interest shall be payable,-

(a) where the institution of departmental or judicial proceeding against the retiring Government servant concerned is pending; and

(b) for the fraction of a month.]
[(1-A). The period beyond which such interest is payable shall be as follows.-

(i)in the case of a Government servant retired otherwise on superannuation and where the Death-cum-Retirement Gratuity is withheld on account of disciplinary proceeding pending against him.-

(a) three months from the date of retirement where the Government servant is exonerated of all charges and where the Death-cum-Retirement Gratuity is paid on the conclusion of disciplinary proceedings;

(b) three months from the date of death where the disciplinary proceedings are dropped on account of death of a Government servant;

(c) three months from the date of issue of orders by the competent authority allowing payment of Death-cum-Retirement Gratuity where the Government servant is not fully exonerated on the conclusion of disciplinary proceedings and where the competent authority desires to allow payment of Death-cum-Retirement Gratuity;

(ii)six months from the date of retirement of a Government servant otherwise than on superannuation under

Fundamental Rule 56(2) or 56(3) or Rules 33, 36, 38, 39 and 42 of the Tamil Nadu Pension Rules, 1978;

(iii)six months from the date of death of a Government servant while in service and where the delay is not caused on account of more than one claimant;

(iv)three months from the date of issue of orders revising the emoluments where the amount of Death-cum-Retirement Gratuity already paid is enhanced on account of revision of emoluments; and

(v)six months from the date of absorption in the case of permanent absorption in the Public Sector Undertakings or Autonomous bodies otherwise than on enmass transfer on conversion of Government department or a part thereof into Public Sector Undertakings or Autonomous bodies.]
[(2)The Government shall be the authority competent to sanction such interest.]"

8.The learned counsel for the petitioner would also submit that the interest can be awarded either at 18% or at 9% and as per the orders in the Writ Appeal (MD)Nos.383 to 457 of 2015, dated 12.06.2015 and that this Court while ordering the retirement dues, has ordered payment by installment along with interest at 6% p.a. and this Court also has to maintain the consistency.

9.Following the Division Bench Judgment of this Court, the Courts are consistently passing orders for payment of retirement dues with interest at 6% p.a. with default interest of 18% p.a.

10.Accordingly, the respondents are directed to pay the interest due (at rate of 6% p.a.) on the retirement dues already paid, within a period of six weeks from the date of receipt of a copy of this order, failing which, the default interest would be 18% p.a.

11.This writ Petition is ordered accordingly. No costs.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

+1cc to M/s.S.Royce Immanuel, Advocate in SR.78343
+1cc to M/s.K.Sathiya Singh, Advocate in SR.78903

W.P(MD)No.22988 of 2016
01.12.2016

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