BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2016

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.23793 of 2016

S.Jesuraj ... Petitioner

-vs-

1. The General Manager,
State Express Transport Corporation (Tamil Nadu) Ltd.,
No.2, Pallavan Salai, Chennai.

2. The Administrator,
Tamil Nadu State Transport Employees Pension Fund Trust,
Thiruvalluvar Illam, Anna Salai,
Chennai-2. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 1st respondent to pay the petitioner Rs.34,965/- towards Gratuity arrears and Rs.1,22,045/- towards Leave Salary and also the interest amount for the petitioners share towards the provident fund and further directing the respondents to pay the interest for the pension commutation amount to the petitioner and other retirement benefits together with 18% interest per annum, within a stipulated time fixed by this Court.

For Petitioner : Mr.R.Murugan

For R1 : Mr.K.Sathiya Singh
Standing Counsel

For R2 : Mr.A.P.Muthupandian

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O R D E R

The benefits bestowed by law upon an employee in recognition of his committed continuous loyal and devoted duty by payment of the pension, gratuity, leave salary etc. are in the nature of property.

2.This right to property cannot be taken away without following due process of law, as right to property has been recognised under Article 300-A of the Constitution of India.

3.It is an accepted position that Gratuity and pension are not the bounties. The concern expressed by the Hon'ble Supreme Court impressing that the retirement dues must be paid in time, is reflected, in the case of *Dr.Uma Agarwal vs. State of U.P.*, reported in *(1999) 3 SCC 438*, and the observation needs as under:-

> "....grant of pension is not a bounty but a right of the government servant. The 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 even 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*."

4.The Tamil Nadu State Transport Corporation is a State as defined under Article 12 of the Constitution of India. It is expected to be a model employer and as a State, it is expected to ensure the enjoyment of the fundamental rights to its employees.

5.Alleging that after retirement, the only source of survival is the terminal benefits and if it is not paid as per the time schedule prescribed under various enactments, that it would amount to violation of fundamental rights, this petition has been filed.

6.It is appropriate to consider the time limit prescribed under payment of gratuity Act, to understand the need for the timely payment of retirement dues. The Payment of Gratuity Act, 1972 reads as under:

> "4.Payment of gratuity:
>
> (*1*) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-
>
> (*a*) *on his superannuation*, or
>
> (*b*) on his retirement or resignation, or
>
> (*c*) on his death or disablement due to accident or disease;
>
> Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:
>
> Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to the heirs.

Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(*2*) to (6) ....”

7.Delay in payment:

Rule 45-A of the Tamil Nadu Pension Rules, 1978 provides that interest shall be payable on the belated payment beyond a period of two months from the date of retirement of a Government Servant.

8.The Hon'ble Division Bench of this Court in the case of Government of Tamil Nadu, Rep. by its Secretary to Government, Revenue Department and the District Collector, Erode vs. M.Deivasigamani, reported in 2009 (3) MLJ 01 held that *an employee is entitled to interest on belated payment of pension and other retiral benefits, even in the absence of statutory rules / administrative instructions or guidelines and that he can claim interest under Part III of the Constitution, relying on Articles 14, 19 and 21 of the Constitution*.

9.Coming to the facts of the present case, the petitioner joined the respondent Corporation on 02.05.1984 as Conductor and he retired from service on 31.05.2012 on reaching the age of superannuation.

10. He has filed this writ petition seeking for a direction to the respondents to pay the retirement benefits.

11.The First Bench of this Court in similar matter has passed an order dated 12.06.2015 in W.A.(MD) Nos.383 to 457 of 2015, issuing direction to the transport Corporations to settle the terminal benefits of its employees in equal monthly installments and to pay 6% interest on the terminal benefits payable to the workman. The Bench has also held that workman is entitled to 18% interest for the defaulted period of installments.

12. In these circumstances, the writ petition is disposed of with the following directions:-

I) A direction is issued to the transport corporation to settle the terminal benefits of the petitioner that are yet to be settled, in twelve equal monthly installments;

ii)The first installment shall commence by making payment on or before the 10^{th} of February 2017 and the amount in each of the remaining installments shall be paid on or before 10^{th} of every succeeding month;

iii) The said terminal amount shall carry interest @ 6% per annum, as per the Division Bench judgment referred to above. In case of delay in making installments, the interest payable could be 18% for the delayed period;

iv) The aforesaid direction to settle the terminal benefits would not preclude the workman to question the computation of any of the terminal benefits, if the same is paid lesser than the amount to which, he is entitled to receive. Likewise, if the petitioner has any grievance that he is entitled to interest for the amount already settled, he can agitate the same as per law, if he is entitled. No costs.

Sd/-
Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar(CS)

To:

1. The General Manager,
State Express Transport Corporation (Tamil Nadu) Ltd.,
No.2, Pallavan Salai, Chennai.

2. The Administrator,
Tamil Nadu State Transport Employees Pension Fund Trust,
Thiruvalluvar Illam, Anna Salai,
Chennai-2.

+1cc to Mr.R.Murugan, Advocate in SR.No.80080
+1cc to Mr.K.Sathiya Singh, Advocate in SR.No.81033

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08.12.2016

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