

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.21067 of 2014

and

M.P.No.1 of 2014

R.Chandran

... Petitioner

Vs.

1. The Principal Secretary to Government,
Home (Transport-II) Department,
Secretariat, Chennai-9.
2. The Principal Secretary /
Transport Commissioner,
Chepauk, Chennai-5.
3. The Accountant-General (A&E),
Teynampet, Chennai-18. ... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents herein to pay the DCRG amount of Rs.10 lakhs and encashment of leave of Rs.6,18,728/- and other retirement benefits due to the petitioner expeditiously without further delay with 10% interest per annum on the entire amount due to the petitioner for the delayed period from 31.8.2008 till the date of actual payment.

For Petitioner : Mr. Ravi Shanmugam

For Respondents: Mr.T.M.Pappiah,
Special Government Pleader
for R1 to R2

For Respondents: Mr.S.Balaji,
for R3

O R D E R

Heard Mr. Ravi Shanmugam, learned counsel appearing for the petitioner, Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondent Nos.1 to 2 and Mr.S.Balaji, learned counsel appearing for the respondent No.3.

2. The petitioner has approached this Court seeking the following reliefs:

"to issue a Writ of Mandamus directing the respondents herein to pay the DCRG amount of Rs.10 lakhs and encashment of leave of Rs.6,18,728/- and other retirement benefits due to the petitioner expeditiously without further delay with 10% interest per annum on the entire amount due to him for the delayed period from 31.8.2008 till the date of actual payment".

3. The case of the petitioner is that he joined as a Motor Vehicle Inspector Grade - II on 26.09.1977. He was promoted as Motor Vehicle Inspector Grade - I on 25.10.1985. Thereafter, he was promoted as Regional Transport Officer on 01.08.1997 and thereafter, promoted as Deputy Transport Commissioner and Joint Transport Commissioner on 13.4.2007 and 23.08.2008 respectively.

4. While the petitioner was working as Joint Transport Commissioner, a charge memo was framed by the Tribunal for disciplinary proceedings for an allegation of disproportionate assets. The petitioner was placed under suspension on 29.08.2008. The petitioner, in the mean while, had attained the age of superannuation on 31.08.2008. However, the Government pursuant to the order of this Court, on 16.11.2009 has revoked the suspension order of the petitioner and permitted him to retire from service on 31.08.2008 without prejudice to the disciplinary proceedings pending against him by issuing G.O.(D) No.1156 and 1157 respectively.

5. Subsequently, the petitioner filed a writ petition in W.P.No.25233 of 2012 for a direction to pass final orders on the disciplinary proceedings within a stipulated time and this Court by order dated 18.09.2012 has disposed of the writ petition with a direction to the respondent to pass final orders within a period of two months from the date of receipt of copy of that order. Since the said order was not complied with, the petitioner had also filed a contempt petition. On 03.03.2014 by G.O.(2D) No.65 Home (Tr-II) Department, had dropped the further action in TDP Case No.33/2008 and exonerated the petitioner.

6. After dropping of the disciplinary action initiated against the petitioner, he has submitted a representation to the

first respondent on 28.03.2014, requesting for settlement of the retirement benefits with 10% interest for the belated payment from 31.08.2008 till the date of actual payment.

7. Since the request of the petitioner was not accepted by the respondent, the petitioner has approached this Court seeking the relief as stated supra.

8. The learned Counsel Mr.Ravi Shanmugam appearing for the petitioner would submit that during the pendency of the writ petition, the amount due to the petitioner towards DCRG had been paid with interest at the rate of 8% on 05.04.2016 and 02.06.2016. However, as regards the interest payable towards commutation of pension, arrears of pension and the surrender of earned leave, the same has not been paid although, this amount have also been settled during the pendency of the writ petition. Therefore, the learned counsel for the petitioner would submit that the petitioner is entitled to grant of interest at the rate of 10% for the amounts towards commutation of pension, arrears of pension and the surrender of earned leave.

9. The learned counsel for the petitioner would rely on the decision passed by the Division Bench of this Court, in the case of Government of Tamil Nadu, rep. by the Secretary to Government, Revenue Department, Chennai and Another Vs.M.Deivasigamani, reported in 2009 (3) MLJ page 1 in which it has been held that the employee is entitled to interest on belated payment of pension and other retirement benefits. The statement of law made by the Division Bench as found in paragraph 7 is extracted below:

"7. In view of the judgment of the Supreme Court, it is now well settled 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 he can make his claim for interest, under Part III of the Constitution, relying on Articles 14, 19 and 21 of the Constitution".

10. Therefore, learned counsel would submit that the claim of the petitioner squarely falls within the law laid down by the Division Bench of this Court. He would also submit that the belated payment towards the retirement benefits which was due as early as in 2008 when the petitioner retired from service cannot be attributable to the petitioner and the delay is entirely due to the illegal action initiated by the respondent against the petitioner which was dropped by way of exonerating the petitioner. In the said circumstances, he would submit that the petitioner is entitled to the payment of interest at 10% from the belated settlement of retirement benefits by the respondent.

11. Upon notice, Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondent Nos.1 to 2 and Mr.S.Balaji, learned counsel appearing for the respondent No.3 has entered appearance and made their submissions, stating that initially there was disciplinary action initiated against the petitioner and therefore the retirement benefits could not be settled in view of the same.

12. Upon considering the rival submissions of the counsel appearing for the parties and after perusing the materials and documents placed on record, this Court is of the view that the contention of the learned counsel appearing for the petitioner deserves positive consideration and the claim of the petitioner has some merits in it for grant of interest as prayed for.

13. Admittedly, for no fault of the petitioner, the retirement benefits had been settled belatedly after the unjust and illegal action initiated by the department against him. In the said circumstances, the petitioner had been deprived of his due financial benefits at the appropriate time when he retired from service on 31.08.2008. The denial of retirement benefits when the petitioner had retired from service must have caused undue hardship and prejudice to the petitioner and his family and such hardship and prejudice has to be suitably compensated by awarding of reasonable interest.

14. In the above circumstances, this Court has no hesitation in allowing the writ petition and there shall be a direction to the respondent to pay 10% interest towards the commutation of pension, arrears of pension and also surrender of earned leave amounts, at the rate of 10% from 31.08.2008 till the date of actual payment. The said directions shall be complied with by the respondent within a period of one month from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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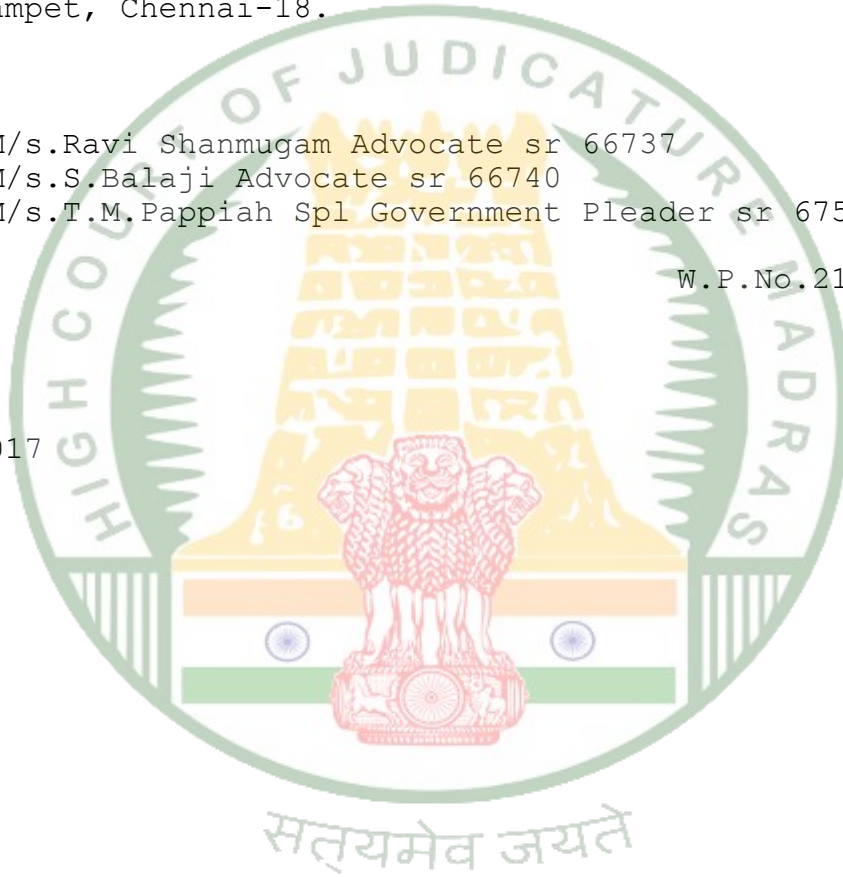
To

1. The Principal Secretary to Government,
Home (Transport-II) Department,
Secretariat, Chennai-9.
2. The Principal Secretary /
Transport Commissioner,
Chepauk, Chennai-5.
3. The Accountant-General (A&E),
Teynampet, Chennai-18.

+1 cc to M/s.Ravi Shanmugam Advocate sr 66737
+1 cc to M/s.S.Balaji Advocate sr 66740
+1 cc to M/s.T.M.Pappiah Spl Government Pleader sr 67546

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