

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

WP.No.4857/2007

V.Kaliaperumal

..

Petitioner

Versus

1. The Commissioner of Municipal Administration
6th Floor, Ezhilagam, Annex Building,
Chepauk, Chennai-5.

2. The Commissioner
Vridhachalam Municipality
Vridhachalam.

..

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the concerned records relating to the Na.Ka.No.2645/2005/H1 dated 29.12.2006 passed by the 2nd respondent insofar as it confines to Rs.64,667/- [Rupees sixty four thousand six hundred and sixty seven only] and consequently direct the respondents to pay Rs.51,27,541/- [Rupees Fifty One lakhs Twenty Seven Thousand Five hundred and Forty One only] [constituting the amounts due to the petitioner together with interest].

For Petitioner : Mr.D.Shivakumaran
For R1 : Mr.K.Dhananjayan, Spl.GP
For R2 : Mr.R.P.Prathap Singh

सत्यमेव जयते

ORDER

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

2 The petitioner, challenging the legality of the order dated 29.12.2006 passed by the 2nd respondent, in and by which, a conditional order of payment was given to recover the loss on account of Audit Objection.

3 The petitioner, in the affidavit filed in support of this writ petition, would aver among other things that he was appointed as Health Assistant on 02.11.1968 and got his

promotion as Sanitary Inspector on 05.04.1971 and on reaching the age of superannuation on 31.01.2000, he was permitted to retire from service. The petitioner would further aver that though he has retired as early as on 31.01.2000, the retiral / terminal benefits amounting to more than Rs.3 lakhs have not been paid and in this regard, he has submitted very many representations and since he was not favoured with any kind of response, he filed WP.No.6404/2005 praying for issuance of a writ of mandamus directing the respondents therein to dispose of the petitioner's representation and this Court, vide order dated 25.02.2005, has disposed of the writ petition by directing the 2nd respondent therein to consider and dispose of the petitioner's representation dated 18.03.2004 on merits and in accordance with law within the stipulated time frame. The petitioner submitted further reminders / representations dated 21.03.2005 ; 24.03.2005 and 27.03.2005 respectively to settle the retiral/terminal benefits in pursuant to the directions passed by this Court in the above said writ petition and once again, he has not been favoured with any response.

4 The petitioner filed Contempt Petition in Cont.P.No.573/2006, alleging non-compliance of the order passed by this Court and during pendency of the said contempt petition, the 2nd respondent, vide order dated 29.12.2006 has paid a sum of Rs.64,667/- towards pay arrears for the period from 16.08.1990 to 04.05.1992 and from 17.06.1997 to 31.12.1998 and it was also indicated that the said payment is subject to recovery from the terminal/retiral benefits in case of Audit Objection. The petitioner also made a claim that he is entitled to claim interest for the belated payment and the Gratuity amount of Rs.3,67,303/- was paid only after five years and the other arrears are also due and also made a calculation in paragraph No.7 in his affidavit, claiming a sum of Rs.51,53,789/-. The petitioner, aggrieved by the act of the respondents in reserving their right to effect recovery from the pensionary benefits in the event of Audit Objection, has filed the present writ petition challenging the said order of the 2nd respondent dated 29.12.2006.

5 The 2nd respondent has filed the counter affidavit stating among other things, that the petitioner has applied for pension only on 22.10.2001 and after verifying the same, it was forwarded to the Directorate of Local Fund Audit on 27.02.2002 and the Director of the Local Fund Audit has pointed out certain defects in the pension proposal and after rectifying the proposal, it was re-sent to the said official on 25.11.2002. It is further averred that the Director of Local Fund Audit sanctioned provisional pension to the petitioner vide proceedings dated 27.02.2003, stating that only after the Final Order passed by the Commissioner of the Vridhachalam Municipality with regard to the disciplinary proceedings pending

against him, full pension would be paid and until then, provisional pension of Rs.3,950/- per month will be paid from 01.02.2000. It is also stated by the 2nd respondent that the Director of Local Fund Audit has sanctioned Death-cum-Retirement Gratuity of Rs.1,47,677/- after deducting a sum of Rs.21,404/- from the total amount of Rs.1,68,981/-, besides sanctioning Commutation amount of Rs.1,98,322/- on 03.09.2004 to the petitioner and there was no delay at all on the part of the 2nd respondent. It is further averred by the 2nd respondent that due to financial crisis in the Municipality and in compliance of the orders passed by this Court in WP.No.6406/2005, the arrears payable by other Municipalities in which, the petitioner had worked, viz., Panruti, Mannarkudi, Erode, Athur, Tindivanam, Salem and Villupuram, has been paid to the tune of Rs.1,49,623/- on 02.02.2007 and though he was sent with a communication to respond to the Audit Objection, he did not do so and hence, prays for dismissal of the writ petition.

6 Mr.D.Shivakumaran, learned counsel for the petitioner would submit that though the petitioner has retired from service as early as on 31.01.2000, DCRG amount of Rs.1,47,677/- [after deducting Rs.21,404/- from the total DCRG amount of Rs.1,68,981/-] on 03.09.2004 and in terms of Rule 45-A of the Tamil Nadu Pension Rules, 1978, he is entitled to claim interest. Attention of this Court was also drawn to the proceedings of the Commissioner of Vridhachalam Municipality dated 08.02.2007, wherein, the quantification of the terminal benefits has been ascertained and stated s Rs.1,49,623/- and prays for payment of interest for the belated settlement of the said amount also.

7 Per contra, Mr.R.P.Prathap Singh, learned Standing counsel appearing for the 2nd respondent / Municipality would submit that admittedly, the petitioner has belatedly submitted the pension proposal and in compliance of the orders passed by this Court in WP.No.6406/2005, immediate steps have been taken by the 2nd respondent and amounts have been paid and though the 2nd respondent is not liable to pay any amount, due and payable by other Municipalities, taking into consideration, the plea made by the petitioner and also the orders passed by this Court, will settle the entire amount without any delay and as such, the petitioner is not entitled to claim any interest.

8 This Court heard the submissions of Mr.K.Dhananjayan, learned Special Government Pleader appearing for the 1st respondent and perused the materials placed before it.

9 The petitioner has retired from service as early as on 31.01.2000 and in terms of Rule 45-A of the Tamil Nadu Pension Rules, 1978, the interest calculation is given with

regard to belated payment. An amendment was brought forth on and with effect from 20.02.1995, wherein the rate of interest shall be 12% per annum [compounded annually]. The petitioner has retired from service on 31.01.2000 and DCRG amount of Rs.1,47,677/- was paid to him only on 03.09.2004 and in the light of the substitution made to Sub-rule [1] of Rule 45-A of the Tamil Nadu Pension Rules, 1978, he is entitled to an interest of 12% per annum for the belated payment. Insofar as belated settlement of the rest of the terminal benefits, amounting to a sum of Rs.,149,623/-, it is the submission of the learned Standing counsel appearing for the 2nd respondent that there is no room or provision as to the payment of interest for the belated payment and as such, the petitioner is not entitled to make any claim in that regard.

10 The Hon'ble Supreme Court of India in the decision reported in 1999 [3] SCC 438 [Dr.Uma Agarwal Vs. State of UP and others], has considered the issue with regard to the payment of interest on the belated disbursement of pensionary benefits and it is relevant to extract the same:-

"5 If rules/instructions which prescribe time-schedule for settling of retirement dues, are followed strictly much of the litigation can be avoided and retired Government servants would not feel harassed. Pension is not a bounty but a right of the Government servant. Government is obliged to follow rules. Delay in settling 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 a case.

6 The present case is a clear example of inexcusable department delay. Respondents contend that letters were sent to the petitioner after her retirement seeking some information for settling her retirement dues but this is denied by the petitioner. Even if it is assumed that such letters were sent, this cannot be an excuse for lethargy of the department because rules/instructions provide for initiation of process much before retirement.

The exercise which was to be completed much before retirement was in fact started long after the petitioner's retirement.

7 This is a fit case for awarding interest to the petitioner. It is however not necessary that the matter should go back to the Government for computation of interest. Instead, on the facts of this case, interest is quantified at Rs. 1 lakh. The same shall be paid to the petitioner within two months."

11 In the decision reported in 2014 [8] SCC 894 [D.D.Tewari [dead] through legal representatives Vs. State of Uttar Haryana Bulivitrn Nigam Limited and othres], the Hon'ble Supreme Court of India has observed that "denial of interest from the date of entitlement period till the date of actual disbursement would take away the valuable rights of the retired Government servant" and it was reiterated in the said decision that pension and gratuity are not bounty to be distributed by the Government to his employees on their retirement, but are valuable rights and property in its hands and any culpable delay in settlement and disbursement thereof, is to be visited with penalty of payment of interest." The Hon'ble Apex Court in yet another decision reported in 1985 [1] SCC 429 [State of Kerala and others Vs. V.Padmanabhan Nair], has awarded interest at the rate of 6% per annum.

12 As per the proceedings of the 2nd respondent dated 08.02.2007 in Na.Ka.No.206/2006/C1, a sum of Rs.1,49,623/- was ordered to be paid towards retiral/terminal benefits. It is the stand of the respondents that the petitioner has submitted the pension proposal only on 22.10.2001 and the provisional pension was sanctioned on 27.02.2003, which culminated into proceedings of the 2nd respondent dated 08.02.2007. Hence, for the belated payment of Rs.1,49,623/- towards terminal retiral benefits, for the period between 22.10.2001 - the date of submission of the proposal by the petitioner till the date of the proceedings of the 3rd respondent dated 08.02.2007, the petitioner is entitled to the simple interest of 6% per annum.

13 In the result, the writ petition is disposed of and the 1st respondent shall take note of the orders passed by this Court in this writ petition and pass appropriate orders as to the payment of interest in accordance with Rule 45[A][i] of the Tamil Nadu Pension Rules on the belated payment of DCRG ; and the other retiral / terminal benefits with the interest at

the rate of 6% per annum from 22.10.2001 to 08.02.2007, within a period of ten weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner herein. No costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

AP
To

1. The Commissioner of Municipal Administration
6th Floor, Ezhilagam, Annex Building,
Chepauk, Chennai-5.
2. The Commissioner
Vridhachalam Municipality
Vridhachalam.

+1 CC to Mr.D. Shivakumaran, Advocate sr 46097
+1 CC to Mr.R.P. Pratap Singh, Advocate sr 45999
+1 CC to Govt. Pleader sr 46277

WP.No.4857/2007

SP(07/07/2017)

सत्यमेव जयते

WEB COPY