

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.5706 of 2013

B.Tharuman

.. Petitioner

Vs.

1. C.B.M. College rep. by its Secretary,
Coimbatore - 641 042.
2. The Principal,
C.B.M. College,
Coimbatore - 641 042.
3. The Regional Joint Director of
Collegiate Education,
Coimbatore Region,
Coimbatore - 641 018.
4. The Treasury Officer,
Coimbatore Huzur Treasury,
Coimbatore - 641 018.
5. Accountant General,
Office of the Accountant General,
Teynampet, Chennai - 18.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of mandamus directing the respondents 1 and 2 to disburse the terminal benefits of the petitioner with 18% interest per annum.

For Petitioner

.. Mr.R.Subramanian

For Respondents

.. No appearance for R1 & R2
Mr.T.M.Pappiah,
Spl. Govt. Pleader for R3 and R4
Ms.T.S.Selvarani for R5

ORDER

Seeking a direction to respondents 1 and 2 to disburse the terminal benefits of the petitioner with 18% interest per annum, the present writ petition has been filed.

2.The petitioner entered the service of the first respondent College as Lecturer in 1979 and thereafter promoted to the post of Associate Professor. After serving the college nearly for 33 years, he attained the age of superannuation and stood retired on 31.07.2012. He was also continued thereafter till the close of the next academic year in 2013. Even after his retirement, the first respondent has not sent the retirement proposals in relation to the petitioner's service to the authorities concerned and due to the delay, the retirement benefits as admissible to the petitioner had not been paid in time. According to the petitioner, the delay in sending the proposal was not attributable to him and for no valid reason, the proposals were not sent promptly after the retirement of the petitioner.

3.According to the petitioner, he was paid provisional pension only from 18.03.2015 i.e. much after his retirement on 31.07.2012 and the gratuity was credited to his account only on 30.09.2015. Thereafter, the pension proposals were forwarded on 30.12.2015. After the proposals were sent on 30.12.2015, the regular pension and commutation of the same was credited only on 23.12.2016. Even after that, many of the other benefits which are due and payable to the petitioner after his retirement like earned leave, unearned leave, special provident fund, re-employment salary etc., were not paid to him. As stated above, the petitioner was re-employed from 01.08.2012 till 31.05.2013, for which period also, no salary was claimed or paid. In the said circumstances, the petitioner has approached this Court for directing respondents 1 and 2 to disburse the terminal benefits of the petitioner with interest at 18% per annum.

4.Notice has been issued to the respondents. On behalf of the third respondent, Mr.T.M.Pappiah, learned Special Government Pleader entered appearance and filed counter affidavit. According to the counter affidavit, particularly para 3, it is stated that the third respondent has given so many instructions to the first respondent but the first respondent has not submitted the pension proposals and no steps have been taken to disburse the terminal benefits of the petitioner. On behalf of the first respondent, Mr.G.Sankaran, learned counsel entered appearance but had not chosen to appear before this Court even on earlier occasion, even today, when the matter was taken up for hearing, there is no representation on behalf of the first respondent.

5.Mr.R.Subramanian, learned counsel appearing for the petitioner would submit that the claim for interest on the delayed settlement of retirement benefits is a constitutional right regardless of the fact that whether it is mentioned in Statutory Rules, Regulations or Guidelines. In support of his contention, he would rely on the decision in S.K.Dua Vs. State of Haryana and Another ((2008) 3 SCC 44). He would particularly rely on para 14 of the judgment which is extracted below:

14.In the circumstances, prima facie, we are of the view that 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 of 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. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.

6.The learned counsel for the petitioner would also rely on the judgment of the Division Bench of this Court in Government of Tamil Nadu Vs. M.Deivasigamani ((2009) 3 MLJ 1), in which the Division Bench relied on the above order of the Supreme Court and held that the employee is entitled to interest on belated payment of pension and other retirement benefits even in the absence of statutory rules, administrative instructions or guidelines and he can make his claim of interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution.

7.Having considered the factual and legal submissions of the learned counsels appearing for the parties, this Court is of the considered view that the petitioner is entitled to interest, though not at the rate of 18% which was sought in the prayer but at the rate of 10% as fixed by the Division Bench of this Court for the belated payment towards retirement benefits. Moreover, this Court is of the considered view that some of the benefits like earned leave surrender, unearned leave surrender, special provident fund and re-employment salary have not been settled

yet to the petitioner. Therefore, there shall be a comprehensive direction to the first respondent to send the proposal for the above said benefits, which the petitioner is entitled to and also the first respondent is directed to pay interest at the rate of 10% per annum from the date when the pension and other retirement benefits became due and payable until the date of realisation. The first respondent is directed to comply with the direction within a period of two months from the date of receipt of a copy of this order. With these directions, the writ petition stands allowed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

mmi

To

1. The Regional Joint Director of Collegiate Education, Coimbatore Region, Coimbatore - 641 018.
2. The Treasury Officer, Coimbatore Huzur Treasury, Coimbatore - 641 018.
3. The Accountant General, Office of the Accountant General, Teynampet, Chennai - 18.

+1cc to Mr.R.Subramanian, Advocate Sr. 59338
+1cc to M/S.T.S.Selvarani, Advocate Sr. 59178
+1cc to the Government Pleader Sr. 59914

W.P.No.5706 of 2013

KGK(CO)
VR(19/09/2017)