IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2017

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THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
And
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.A.No.2549 of 2010

Dr.M.R.Kokan, M.S. ... Appellant/Petitioner

Vs.

1.The Secretary to the
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Chennai - 600 009.

2.The Accountant General,
Accountant General's Office,
Anna Salai, Chennai - 600 018.

3.The Dean,
Government Mohan Kumaramangalam
Medical College,
Salem - 636 030.

4.The Director of Medical Education,
Kilpauk, Chennai - 600 010. ... Respondents/Respondents

Prayer:
Writ Appeal filed under Clause 15 of Letters Patent seeking to set aside the order dated 09.04.2010 passed in W.P.No.27231 of 2004.

W.P.27231/04

Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the respondent to pay the petitioner interest on his pension arrears and on commutation of pension at the rate of 18% per annum from the date of his retirement till 01.07.2000 and commutation of pension and compensation to a tune of Rs.1,00,000/- (Rupees One Lakh only) for the mental agony suffered by the petitioner due to the delay of payment and also pay the interest on leave and duty salary at the rate of 18% per annum from the date of retirement till payment.

For Appellant : Mr.G.M.Syed Nurullah Sheriff

For Respondents R1, R3 and R4 : Mr.P.Sivashanmugasundaram Special Government Pleader

Mr.T.Ravikumar for R2

J U D G M E N T

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J.)

This writ appeal has been filed seeking to set aside the order dated 09.04.2010 passed in W.P.No.27231 of 2004.

2.The writ petition stems from the lazy and lethargic action on the part of the competent Authority in securing payment of pension in time to those who retire from service.

3.The writ petitioner was recruited to the Tamil Nadu Medical Services on 25.02.1964 as an Assistant Surgeon. During his service, he was permitted to prosecute higher studies and accordingly, passed M.S.(General Surgery) Course. After obtaining Post Graduate Degree in Surgery, he was posted to serve in various Government Medical Colleges and at last, he was posted as a Reader in Surgery, Government Mohan Kumaramangalam Medical College, Salem. He joined the said post on 21.09.1993 forenoon and he sought for voluntary retirement from service of the Government with effect from 31.12.1993 and was accordingly, permitted to retire from service on the afternoon of 31.12.1993.

4.It is his specific case that he submitted the pension papers in Form No.30, in triplicate on 05.01.1994, but unfortunately, those papers, were not forwarded by the Office of the Dean, Government Mohan Kumaramangalam Medical College, Salem, to the Office of the Accountant General, Madras, for settling the pensionary benefits to the writ petitioner. Several representations have been made thereafter calling for the attention of the Office of the Dean, Government Mohan Kumaramangalam Medical College, Salem, with a request to forward the pension papers to the Office of the Accountant General, but however, only subsequent to the intervention of the Director of Medical Education, the pension papers have been forwarded to the Accountant General's Office.

5.Upon receipt of the same, the Accountant General's Office has noticed that the pensionary contribution for a period of nearly five years, when the writ petitioner was allowed to work in the Kingdom of Saudi Arabia was not paid. Upon receiving the intimation, necessary remittance was also made by the appellant/

writ petitioner. It is thereafter, provisional pension and provisional DCRG amount has been paid to begin with and subsequently, the final pension and final amount of DCRG have been settled and paid. Insofar as the amount of Gratuity is concerned, interest has been paid but however, when it came to the pension, no such interest has been made. Hence, he instituted the writ petition.

6.The learned Single Judge who had come to the conclusion that the petitioner has made his contribution towards the pension arrears for the period of absence only on 22.09.1998 and therefore, the petitioner was responsible substantially for the delay in setling his terminal benefits and since the pensionary benefits have been paid with effect from 01.07.2000, no further liability can be fastened on to the State for delayed payment of pension and insofar as the interest payable thereof is concerned, the learned Single Judge was of the opinion that since the State Government in their G.O.Ms.No.517, Finance (Pension) Department, dated 12.06.1987, has ordered for payment of interest only on delayed payment of Gratuity but not on pension and interest on pension cannot be paid. The learned Single Judge, however, directed interest to be calculated on delayed payment of pension from 1998 till 01.07.2000 at the same rate of interest, which was paid on delayed Gratuity.

7.The complaint in this writ appeal is that the appellant/ writ petitioner has retired from service on 31.12.1993, whereas, the learned Single Judge has confined the payment of interest on delayed portion of the pension only from 1998 and thus, denied effectively payment of interest on pension for a period of nearly five years.

8.Heard Shri.G.M.Syed Nurullah Sheriff, learned Senior Counsel appearing for the appellant/ writ petitioner and Shri.P.Sivashanmugasundaram, learned Special Government Pleader appearing for the respondents 1, 3 and 4 and Shri.T.Ravikumar, learned Standing Counsel appearing for the Accountant General/ second respondent.

9.There is no dispute on the essential facts. It is also not in dispute that the writ petitioner was permitted to go abroad for taking up employment and accordingly, he took up employment in the Kingdom of Saudi Arabia between 26.08.1988 upto 15.07.1993, for a period of nearly five years. The period inbetween these two dates has been regularized by the State Government by passing orders through their G.O.Ms.No.1034, Health Department, dated 14.11.1994. Thus, the period of five years of absence of the writ petitioner from the service of the State of Tamil Nadu has not been regularized till the Government passed orders through their G.O.Ms.No.1034, Health Department, dated 14.11.1994. Since no issue has been raised before us, we have not examined as to why the said period was not regularised earlier. Thus, though the writ petitioner retired from service on 31.12.1993, the period of his absence for nearly five years between 1988 to 1993 was not regularized till 14.11.1994 and till such regularization orders are passed by the State Government, computation of his continuous service upto 31.12.1993, the date on which he sought for voluntary retirement and accordingly retired, would not be possible.

10.Normally, the maximum period of absence from service that can be sanctioned to a Government servant of Tamil Nadu, as per Rule 81(d) of the Fundamental Rules, is 28 months but however, in the instant case, the writ petitioner was absent from service for a period of nearly five years, when he took up employment, ofcourse with the prior permission of the Government, in the Kingdom of Saudi Arabia.

11.Normally, the State Government would have insisted for an equal length of service to be rendered after such return to the Country by such a Government servant but in the case of the writ petitioner, because of some extrordinary circumstances, which prompted him to opt for retirement, the State Government has taken into account and consideration, the relevant facts and circumstances and accorded permission for him to retire from service on voluntary basis in less than three months after his return from Kingdom of Saudi Arabia and joining as a Reader in Surgery in Government Mohan Kumaramangalam Medical College, Salem. Therefore, the net result is, till the end of 1994, there was, in principle no delay in not securing sanction of pension or other terminal benefits to the writ petitioner but however, there was no justification offered by the Office of the Dean of the Government Mohan Kumaramangalam Medical College, Salem, in not forwarding the pension papers after the State Government has passed orders through their G.O.Ms.No.1034, Health Department, dated 14.11.1994, regularizing the period of absence of the writ petitioner between 26.08.1988 upto 15.07.1993.

12.The writ petitioner infact took up the matter with the Director of Medical Education on 05.08.1996 bringing to his notice that pursuant to the orders passed by the State Government through their G.O.Ms.No.1529, Health and Family Welfare Department, dated 30.12.1993, the petitioner has retired voluntarily from service of the Government on the afternoon of 31.12.1993 but yet his pension papers have not been forwarded to the Office of the Accountant General by the Office of the Dean of the Government Mohan Kumaramangalam Medical College, Salem. The Director of Medical Education promptly responded to the representation submitted by the writ petitioner on 05.08.1996 by passing orders on 10.08.1996 directing the Office of the Dean, Government Mohan Kumaramangalam Medical College, Salem, to forward the pension papers of the writ petitioner to the Office of the Accountant General. He also called for remarks on the representation of the writ petitioner for causing enormous delay in forwarding the pension papers. That is how, the pension papers of the writ petitioner moved to the Office of the Accountant General.

13.Then the question with regard to contribution to be made for the period of five years was examined by the Office of the Accountant General. As per Rule 115(a) of the Fundamental Rules, while a Government servant is in foreign service, contribution towards the cost of his pension must be paid to consolidated fund on his behalf, while Clause (b) thereof sets out that if the foreign service is in India, contribution must be paid on account of the cost of the leave salary also and Clause (c) sets out that contributions due under Clause (a) and (b) above were required to be paid by the Government servant himself unless the foreign employer consents to pay the same. Rule 116 of the Fundamental Rules prescribes the rate of contributions payable on account of pension and leave salary and furnishes the data in a tabulated form. The data has worked out separate percentages for Group 'A', Group 'B', Group 'C' and Group 'D' Officers. For Group 'A' Officers, for a period of four to five years, 9% has been prescribed as the rate of contribution in Rule 116 of the Fundamental Rules. Therefore, in effect, the writ petitioner/ appellant before us, could have calculated, on his own, the contributions payable by him for the period of five years, for the period he was absent from the service of the State, but he has not made any such contributions on his own. The contributions were admittedly paid by him, as was noticed by the learned Single Judge, only on 22.09.1998 and that was the reason why the learned Single Judge ordered for payment of interest on delayed pension for the period beyond thereafter.

14.Though in principle, we are in agreement with the view taken by the learned Single Judge, but however, we are left wondering as to why, for the delay that was caused in forwarding the pension papers by the Office of the Dean, Government Mohan Kumaramangalam Medical College, Salem, one should not be awarded compensatory costs in the matter. While it may be true that the orders passed by the State Government contained in their G.O.Ms.No.517, Finance (Pension) Department, dated 12.06.1987 talk of payment of interest on delayed payment of Gratuity only and consequently, does not cover the event of any delayed payment of pension, but none-the-less, some amount ought to have been awarded as compensatory cost for the delay in setling the provisional pension, to begin with till July, 2000.

15.There is hardly any gain, saying that the delay had occasioned all, due to the irresponsibility and insensitivity exhibited by the employees concerned in the Office of the Dean of the Government Mohan Kumaramangalam Medical College, Salem. Inspite of several reminders sent by the writ petitioner by registered post, there was no response from the Office of the Dean of the Government Mohan Kumaramangalam Medical College, Salem, nor did the pension papers of the writ petitioner get transmitted to the Office of the Accountant General either. The blame for the delay that has occurred in payment of the pension to the writ petitioner is squarely lying at the door steps of the Dean of the Government Mohan Kumaramangalam Medical College, Salem. Ashtonishingly, the Dean of the Medical College has also, apparently, failed to sensitise his staff in the matter, inspite of repeated representations of the writ petitioner.

16.The State Government has agreed with the proposal of the Director of the Medical Education, when it passed orders through their G.O.(D).No.210, Health and Family Welfare Department, dated 02.03.1999 and held that there is no justification to demand penal interest to be paid on the contribution to be made by the writ petitioner and accordingly, waived payment of Rs.33,846/- representing interest for delayed payment of pensionary contribution, as calculated by the Office of the Accountant General. Thus, the State Government itself has, in principle, recognized that the delay in setling the pensionary benefits to the writ petitioner has occasioned and the blame in that regard lies at the door step of the Office of the Dean of the Government Mohan Kumaramangalam Medical College, Salem.

17.This apart, the Director of Medical Education in his intimation addressed to the Accounts Officer, Pension (6), Office of the Principal Accountant General (A & E), Chennai, dated 28.08.2001 has assured that persons responsible for the abnormal delay in securing pensionary beneifts to the writ petitioner are identified and that action is being taken separately against the said individuals. In these given set of circumstances, we are of the opinion that compensatory costs of Rs.50,000/- (Rupees Fifty Thousand Only) ought to have been awarded by the learned Single Judge to the writ petitioner.

18.Payment of pension is no act of grace or bounty on the part of anyone. That is a right earned by the Government servant, in recogniziton of his past services. That is the reason why payment of pension to the Government servants has come to be recognized as a event of deferred payment for the quality of services rendered by such men. Afterall, the State Government promises certain services to its citizens and secures delivery of such services to the citizens by employing Government servants. Therefore, in recognition of such services rendered to the citizens, the State undertakes to pay monthly pension to such retired Government servants, also as a measure of social security. Any delay in setling such terminal benefits has to be viewed seriously.

19.The maximum period of six months is considered as a reasonable outer limit for sanction of pension and other terminal benefits. At any rate setling the pensionary benefits beyond a period of one year can never be appreciated and it must necessarily result in some kind of compensation. Since the State Government has taken a Policy decision to award interest on delayed settlement of Gratuity- which infact is in consonance with the provisions contained in Section 7(3-A) of Payment of Gratuity Act, 1978- but at the same time, the State Government, as a Policy has not authorized any payment of interest on delayed pension. In the absence of any Policy decision on the part of the State Government, we are not denuded to come to the rescue of a hapless and helpless retired servant of the State. We can properly mould the relief and award compensatory cost which are capable of being recovered from the identified/ identifiable persons responsible for the malady. The Government servants are accountable forboth what they do and don't do.

20.Taking the overall picture of all the facts and circumstances cited supra by us, while in principle, approving the judgment and order passed by the learned Single Judge in W.P.No.27231 of 2004, we modify the said order to the extent of awarding additionally compensatory cost of Rs.50,000/- (Rupees Fifty Thousand Only), which are liable to be recovered from all the persons concerned from the Office of the Dean of the Government Mohan Kumaramangalam Medical College, Salem.

21.At the first instance, the State Government will pay Rs.50,000/- (Rupees Fifty Thousand Only) to the writ petitioner/ appellant and will file a report before the Accountant General, within a period of six months thereafter, that the said amount has been recovered from the persons concerned. The Accountant General in turn, will file a report within a further period of two months thereafter with the Registrar (Judicial), High Court of Madras, Chennai 600 104, that the order passed by us, has been faithfully complied with by all, failing which, the Registrar (Judicial) shall bring to the notice of the Court, the default in either paying and or recovering the compensatory costs, now ordered to be paid, so that further suitable action can be taken by this Court.

22.This appeal is accordingly, disposed of. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

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To

1. The Secretary to the
   Government of Tamil Nadu,
   Health and Family Welfare Department,
   Fort St.George, Chennai - 600 009.

2. The Accountant General,
   Accountant General's Office,
   Anna Salai, Chennai - 600 018.

3. The Dean,
   Government Mohan Kumaramangalam
   Medical College,
   Salem - 636 030.

4. The Director of Medical Education,
   Kilpauk, Chennai - 600 010.

5.Copy To:

The Registrar Judicial,
High Court, Madras

6. The Section Officer,
   Writ Section,
   High Court, Madras.

+ 1 cc to M/s.G.M.Syed Nurullah Sheriff Advocate,SR.47790

+ 1 cc to M/s.T.Ravikumar Advocate,SR.47763

+ 1 cc to The Govt.Pleader, SR.48069

W.A.No.2549 of 2010

VGI(CO)
NR 07/08/2017