



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.02.2017
CORAM

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P(MD)No.9974 of 2011

S.Muppudathi

.. Petitioner

Vs

1. The Secretary to Government,
Department of Education,
Fort St. George,
Chennai.
2. The Director of Elementary Education,
College Road, Egmore,
Chennai-6.
3. The District Elementary Education Officer,
Tirunelveli.
4. The Additional Assistant Elementary Education Officer,
Kadayanallur,
Tenkasi Taluk.

.. Respondents

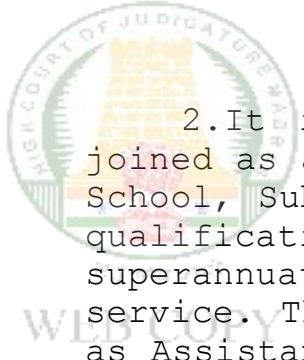
Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to pay the Teachers Provident Fund, leave salary, salary arrears, 3rd installment of gratuity and all retiral benefits with 18% interest.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.K.Guru
Additional Government Pleader

O R D E R

The petitioner, who is a retired Assistant Elementary Education Officer has come up with the present writ petition for Mandamus to direct the respondents to pay the Teachers Provident Fund, Leave Salary, Salary Arrears, 3rd Installment of Gratuity and all retiral benefits with 18% interest. Admittedly this is the 2nd writ petition filed by the petitioner in order to get his retiral benefits.



2.It is the case of the petitioner that on 15.11.1971, he joined as a Higher Grade Teacher in the Panchayat Union Elementary School, Subbaiyapuram. Periodically he acquired higher educational qualifications and also got promotions. Ultimately he attained superannuation on 30.04.2007, but was not relieved from the service. The petitioner also pointed out that when he was serving as Assistant Elementary Education Officer at Alwar Thirunagari, he was issued with a charge memo U/s 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. In this regard a minor punishment of censure was imposed upon the petitioner at the end of enquiry. However, the grievance of the petitioner is that in spite of several representations, he was not provided with his retiral benefits. One of the representations addressed to the District Collector concerned dated 16.10.2007 was forward to the District Educational Officer for further legal action. So, the 3rd respondent by his proceedings dated 26.11.2007, communicated the petitioner that the petitioner would get redressed at the earliest. But even thereafter, the petitioner was constrained to give several representations to the 2nd respondent dated 31.12.2007, 22.05.2008, 01.07.2008, 12.07.2008, 14.08.2008 and 06.11.2008.

3.In the mean while the 2nd respondent by his proceeding dated 09.06.2008, directed the 3rd respondent to send the pension proposal of the petitioner and to sanction all the monetary benefits to him within a week. Even thereafter the petitioner sent another representation to the 3rd respondent on 23.06.2008 by pointing out the direction of the 2nd respondent. Further, the 4th respondent was also directed by the 2nd respondent on 26.08.2008 to take necessary steps to provide all the retiral monetary benefits to the petitioner.

4.The further case of the petitioner is that on 24.02.2009, the petitioner also sent another reminder to the respondents in order to get redressed. However, as the respondents did not come forward to redress the grievance of the petitioner, he was constrained to file a writ petition before this court in W.P.No.2802 of 2009. Considering the grievance of the petitioner, this court had passed the order as follows:

"Courts have consistently held that pension is not a bounty to be withheld and that the Government Servant is entitled to get pension as well as other retiral benefits, immediately on retirement, unless any disciplinary proceedings are pending or otherwise. As there is no such impediment the respondents are bound to send the pension proposals immediately. In these circumstances, a direction is issued to the respondents 3 and 4 to send the pension proposals after refixing/sanctioning the selection grade applicable to



the case of the petitioner and forward the same within a period of four weeks from the date of receipt of a copy of this order. The petitioner shall also furnish necessary details, if so required.

Having regard to the grievance expressed by the petitioner that he has to incur medical expenditure for him, the authorities are directed to take up with Accountant General (P & I), State of Tamil Nadu and see that the pension proposals sent by them are processed and settled expeditiously and appropriate orders have to be issued immediately. The whole exercise shall be completed within a period of three months from the date of receipt of a copy of this order."

The further grievance of the petitioner is even after the order of this court the 4th respondent failed to send the his pension proposal but communicative petitioner as if give did not extent his co-operation to send the pension proposal. Finally the pension proposal was sent and the petitioner was paid pension for paid of 34 months 18.03.2010 and 02.09.2010 presently he is a receiving the monthly pension continuously."

The reason for filing the instant writ petition as stated by the petitioner is that though he is being paid the monthly pension; the other monetary retired benefits have not been paid.

5. On the other hand, the 4th respondent has filed a common counter affidavit on his behalf and on behalf of the other respondents. The perusal of the counter affidavit would show that he was unable to send the pension proposal of the petitioner, due to the non co-operation of the petitioner. Further, it is pointed out that followed by the order passed by this court in W.P.No.2802 of 2009, the grievance of the petitioner was redressed. However, it is the case of the respondents that the delay in disbursing the other retiral benefits of the petitioner is neither willful nor negligence of duty on the part of the department, but only due to the administrative reasons.

6. Considering the grievance of the petitioner, the counter affidavit of the respondents and after perusal of the entire materials available on record, it is clear that the delay in disbursing the retiral benefits to the petitioner is on the part of the 4th respondent. Though in the counter affidavit, it is pleaded by the 4th respondent that the petitioner has not shown any interest to settle his personal affairs then and there, but unfortunately the 4th respondent has not produced any communication caused by him to the petitioner by instructing the petitioner to furnish particulars. Apart from that the 4th respondent, despite found fault with the petitioner, he has not justified his stand with regard to the steps taken to disburse the

retiral benefits to the petitioner even after the order passed by this court in W.P.No.2802 of 2009 dated 06.04.2009.

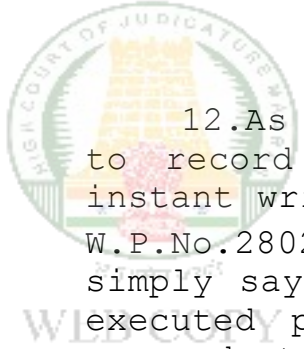
7.I heard Mr.M.P.Senthil, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondents.

8.It is found from the records that the petitioner is made run from pillar to post to get retirement benefits nearly about a decade after his retirement. The respondents cannot justify the belated disbursement of part of retirement benefits of the petitioner by finding fault with him. This court as well as the Hon'ble Supreme Court on several occasions had heavily come down upon the authorities in disbursing the retiral benefits belatedly as the same is not a charity, but it is the right of the retired Government Servants.

9.In this aspect the Learned Counsel for the petitioner has relied upon the Judgment of this Hon'ble Court reported in 2011(2) CWC 533, in the case M.Subbain -vs- The Commissioner, Kumbakonam Municipality and others dealing with Interest on delayed payment of gratuity. Claim of Writ Petitioner (employee of respondent/Municipality) for interest at 12 % p.a. on delayed payment of gratuity paid after passing of order in previous Writ Petition. Held, right for payment of interest for delayed payment even in absence of statutory Rules or guidelines, arises from part III of Constitution of India, Article 14, 19, and 21, since retirement benefits are not in nature of bounty. S.K.Dua v. State Of Haryana, 2008 (3) SCC 44, Relied on. Applicability of above said G.O. G.O. is applicable since no Disciplinary proceeding is pending against petitioner. Section 8 of Payment of Gratuity Act, 1992, enables payment of interest in case of delayed payment subject to condition that such payment did not exceed gratuity amount. The respondents directed to pay interest on gratuity at 12%. p.a. The above said Judgment of this Hon'ble Court is squarely applicable to the facts of the present case.

10.Yet another Division Bench Judgment of this Hon'ble Court reported in 2009 (4) MLJ 1045 held that the part of gratuity amount withheld by the department, was not disbursed. The Hon'ble Division Bench has held that the petitioner is entitled for interest at the rate of 10% per annum. In the present case, the retirement benefits of the petitioner have not been disbursed without any valid reason for about 10 years.

11.Though the 4th respondent has tried to justify the steps taken to disburse the retiral benefits to the petitioner, but the inordinate delay cannot be appreciated in any manner. Further, the respondents have not come up with the case that the petitioner is under the clutches of any departmental proceedings. When no such disciplinary proceedings are pending, it is the duty of the respondents to provide the retiral benefits at the earliest without any delay.



12.As for as the present case is concerned it is unfortunate to record here that the petitioner is compelled to file the instant writ petition even after the order passed by this court in W.P.No.2802 of 2009 dated 06.04.2009. The 4th respondent cannot simply say that the order passed in W.P.No.2802 of 2009 has been executed promptly without filing any documentary evidence. The respondents ought to have taken into account the mental equilibrium of the retired Government Servant by considering his inevitable requirements. Every day delay in disbursing the retiral benefits must be taken note of the Head of the Department and to give periodical instructions to the concerned officer in the disbursement of retirement benefits without any delay. From the foregoing discussions this court has no hesitation in allowing the writ petition with the following directions.

13.In the result the writ is allowed and respondents are strictly directed to pay the petitioner's Teachers Provident Fund, leave salary, salary arrears, 3rd installment of gratuity and all other retiral benefits with interest at the rate of 18% per annum from the date of his retirement till the date of the disbursement of the retiral benefits within a period of 6 weeks from the date of receipt of the copy of this order. Failing which, the retiral benefits have to be sanctioned with interest at the rate of 24% per annum. No cost.

Sd/-

Assitant Registrar(AS)

/True copy/

Sub Assistant Registrar

To

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