

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.7079 of 2014

M.M.Mohamed Salahudeen ...Petitioner

Vs

1.The Government of Tamil Nadu,
Rep.by its Secretary,
Highways Department, Chennai-9.

2.The Director General (H),
Highways Department,
Chepauk, Chennai-5. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order issued by the 1st respondent G.O.(Rt) No.115 Highways and Minor Ports (HK2) Department dated 07.06.2010 and quash the same in so far as paying the interest for the delayed payment of DCRG due to the petitioner calculating the interest at 8% instead of at 12% with effect from 01.04.2004 and consequently to direct the respondents to pay the balance amount of interest by calculating the interest at the rate of 12% for the delayed payment of DCRG from 01.05.2003 to 31.07.2009 to the petitioner and also direct the respondents to pay interest on the said balance amount of interest for the delayed period from 20.08.2009 to till the date of payment at the rate.

For Petitioner : Mr.N.Subramaniyan

For Respondents : Mr.R.Janaki, Additional Government
Pleader

ORDER

The petitioner in this writ petition has challenged the inaction of the respondents in not releasing the appropriate interest for delay in release of the DCRG amount to be illegal and arbitrary with a prayer to issue necessary direction to them to release the interest at the rate 12% per annum for the delayed payment of DCRG.

2. As it appears, the writ petitioner superannuated from the service of the respondents' Department on 31.01.2003 and he was entitled to payment of DCRG amount. Admittedly, entitlement of Rs.2,98,499/- towards the DCRG amount ought to have been paid to him on or before 01.05.2003. However, for the reasons best known to the respondents, the same was not paid to him by the aforesaid date and there was inordinate delay in release of the said amount. As per the Government Circular in G.O.Ms. No.122, Finance (Pension) Department dated 20.02.1995, interest at the rate of 12% compounded annually for the belated payment of DCRG amount is required to be paid to the superannuated Government servants. However, by G.O.Ms. No.173, Finance (Pension) Department, dated 01.04.2004, the Government came out with a circular superseding the aforesaid circular indicating therein that the Government servant, who retired after 01.04.2004, shall be paid interest at the rate payable for the general provident fund, in respect of the year in which the Government servant retired. Admittedly, the petitioner had retired on superannuation on 31.03.2003 which is before 01.04.2004 and as such he is entitled to interest as per the G.O.Ms.No.122, Finance (Pension) Department, dated 20.02.1995. However, according to the petitioner, the Government of Tamil Nadu released the DCRG amount calculating interest at the rate of 12% till the date of aforesaid circular and after 01.04.2004, interest was calculated at the rate of 8% till the date of payment, i.e. on 30.06.2009. The writ petitioner has challenged such determination of interest in this writ petition as illegal and arbitrary and contrary to G.O.Ms.No.122, Finance (Pension) Department, dated 20.02.1995 and G.O.Ms.No.173 dated 01.04.2004 with the prayer indicated supra.

3. No counter affidavit has been filed by the respondent.

4. Learned counsel appearing for the writ petitioner submits, since the writ petitioner has been unnecessarily harassed by illegal discrimination in spite of the clear instructions in G.O.Ms.No.173, Finance (Pension) Department dated 01.04.2004 that persons who are superannuated prior to 01.04.2004 are entitled to interest at the old rate as mentioned in G.O.Ms.No.122, Finance (Pension) Department, dated 20.02.1995 for delayed payment, by withholding part of his interest payable to him, though similarly situated superannuated employee were granted 12% interest, for which he was compelled to file this writ petition, the writ petition be allowed with exemplary cost and direction be given to proceed against the person who have discriminated him.

5. Learned Addl. Government Pleader appearing for the respondents-State fairly submits due to inadvertence or wrong interpretation of the Government Order, the appropriate

interest, to which the writ petitioner is entitled, could not be paid to him, but the Government is now ready and willing to pay the differential interest to which the petitioner was entitled to.

6. It is not disputed that there was delay in release of the DCRG amount to the writ petitioner and also the writ petitioner is entitled to interest at the rate of 12% compounded annually till the payment as per the G.O.Ms.No.122, Finance (Pension) Department dated 20.02.1995. But since he was not released with the appropriate interest, in view of the G.O.Ms.No.173, Finance (Pension) Department dated 01.04.2004, it would be apposite to have a look on the same for proper appreciation of the claim, which reads as thus :-

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GOVT OF TAMILNADU

ABSTRACT

Death cum Retirement Gratuity-Payment of interest on belated payment of Death cum Retirement Gratuity-Rate of interest-Orders-Issued.

Finance (Pension) Department

G.O.Ms.No.173

dated: 01.04.2004

Read:

G.O.Ms.No.122, Finance (Pension) Department, dated 20.02.1995

ORDER:

In the reference cited, orders were issued to pay interest at the rate of 12% compounded annually for the belated payment of Death Cum Retirement Gratuity for the Government Servants. The

said order was issued based on the rate of interest fixed for the General Provident Fund by the Central Government.

2. Taking into consideration the rate of interest fixed by the Central Government in recent times for the General Provident Fund, it is ordered that the Government Servants who retire hereafter shall be paid interest at the rate based on the rate of interest in force payable for the General Provident fund in respect of the year in which the Government Servants retire.

3. This order comes into force with effect from 01.04.2004.

(By Order of the Governor)

N. Narayanan,
Development Commissioner
cum Secretary."

7. A perusal of the aforesaid Government order makes it abundantly clear that an employee who has retired prior to 01.04.2004 shall be guided by the G.O.Ms.No.122, Finance (Pension) Department, dated 20.02.1995. As it appears, the petitioner was not paid interest at the rate of 12% per annum over the DCRG amount till the date of release of the same but was released with 8% interest after 01.04.2004 misinterpreting the aforesaid G.O.Ms.No.122, Finance (Pension) Department, dated 20.02.1995, though retire prior to 01.04.2004. It is the case of the writ petitioner that he was discriminated by the employees dealing with the file intentionally though similarly situated persons who superannuated prior to 01.04.2004 were released with 12% interest over the DCRG amount for such delayed payment made after 01.04.2004.

8. Considered the contentions advanced and perused the materials on record, especially the G.O. quoted supra. From the aforesaid, there is no manner of doubt that the G.O. dated 01.04.2004 has no application to the case of the writ petitioner for delayed payment of the DCRG, Inasmuch as writ petitioner case was guided by the G.O.Ms.No.122, Finance (Pension) Department, dated 20.02.1995 in respect of the delayed payment of his DCRG @12% interest through out till the DCRG was paid. But he was released with 8% interest over the DCRG amount from 01.04.2004 till the date of payment, misinterpreting The G.O.Ms.No.173, Finance (Pension) Department dated 01.04.2004, quoted supra. Such action of the authorities being contrary to the G.O.Ms.No.122, Finance (Pension) Department, dated 20.02.1995, is impermissible.

9. Therefore, this Court allows this writ petition with a direction to the respondents-State to calculate the remaining part interest of 4% over the DCRG of the petitioner from 01.04.2004 and compound such interest annually and pay 12% interest over such compounded interest till the date of payment. Furthermore, considering the submissions of the learned counsel appearing for the respondents-State that the approval of finance Department is required to make fund available to comply with the direction of this Court and as such three months time be granted, it is directed that the compliance of the aforesaid order be made within three months of production / receipt of the copy of this order. However while parting with the case, in view of the submission of the learned counsel for the petitioner that though for similarly situated retired employees, an appropriate interest was paid,

but in order to harass him, order was passed that after 01.04.2004, he is entitled to 8% interest, this Court directs the Government in appropriate Department to make an enquiry and if the same is so, fix the responsibility with the person responsible and proceed against him in accordance with law, including realising the financial burden caused to the State, for such motivated action, if any of such employee.

10. With the above direction, the writ petition stands disposed of. However in such circumstances, there shall be no order as to costs.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The Secretary,
Highways Department, Chennai-9.

2.The Director General (H),
Highways Department,
Chepauk, Chennai-5.

+1cc to Mr.N.Subramanian, Advocate SR.No.73343

+1cc to the Government Pleader SR.No.13252

SDR 06.04.2018

W.P.No.7079 of 2014

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