IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.08.2018
CORAM
THE HONOURABLE Dr. JUSTICE S.VIMALA

W.P.No.14639 of 2017

V.Jotheeswari ... Petitioner

versus

1. Tamil Nadu Civil Supplies Corporation,
Rep. by its General Manager (Administration),
10, Thambuswamy Road, Chennai - 10.

2. The Tamil Nadu Civil Supplies Corporation,
Rep. by Managing Director,
Chennai - 10. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of writ of mandamus, to direct the respondents to release the gratuity amount due to the petitioner immediately with penal interest at 10% for delayed payment.

For petitioner : Mr.S.Venkataraman

For Respondents: No appearance

ORDER

Whether gratuity is a property covered under Article 300A of the Constitution of India and if so, whether the non-payment of gratuity to an employee would amount to not only violation of statutory right, but also a constitutional right?

2. The petitioner, who was permitted to retire from service of the respondent Corporation, on 30.06.2015, without prejudice to pending charge dated 03.03.2015, has filed this writ petition seeking disbursement of gratuity.

3. It is the contention of the learned counsel for the petitioner that the non-payment of gratuity is against the circular dated 28.07.2010 issued by the Tamil Nadu Civil Supplies Corporation. The relevant portion of the circular reads as under:

> "In order to avoid such delayed settlement of gratuity and also to avoid legal litigation, it has

been decided that while issuing orders of retirement without prejudice to recover any loss towards storage loss, transit loss, audit objection, etc. to an employee, it may also be clearly stated in the order itself that gratuity will be settled as per the Payment of Gratuity Act notwithstanding the issue of order of retirement without prejudice to recover the loss sustained by the Corporation. However, it is made clear that the loss sustained by the Corporation towards storage loss, transit loss, short out-turn, etc. may be recovered from the other payments such as encashment of Earned Leave and Leave on Private Affairs and arrears of salary, if any payable to the retired employee after his retirement."

4. It is relevant to point out that the circular has been issued towards ensuring disbursement of gratuity within 30 days from the date of retirement as contemplated under Section 7(3) of the Payment of Gratuity Act, 1972.

5. A perusal of the circular would show that the circular itself has been issued only to avoid delay in settlement of gratuity and for the recovery of losses from other head of account. Therefore, it is clear that there is no justification on the part of the respondents in delaying payment of gratuity.

6. The learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in the case of State of Jharkhand and others vs. Jitendra Kumar Srivastava and another (C.A.No.6770 of 2013 arising out of SLP (C) No.1427 of 2009, dated 14.08.2013) contending that the payment of gratuity is not only a statutory mandate, but, a constitutional mandate.

"12. Right to receive pension was recognized as right to property by the Constitution Bench Judgment of this Court in Deokinandan Prasad vs. State of Bihar, (1971) 2 SCC 330, as is apparent from the following discussion:

"29. The last question to be considered, is, whether the right to receive pension by a Government servant is property, so as to attract Articles 19(1)(f) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adve-rted to earlier and we now proceed to consider the same.

30. ......
31. ....
32. ....

> 33. ....
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> 34. This Court in State of Madhya Pradesh vs. Ranojirao Shinde and another MANU/SC/0030/1968 : [1968] 3 SCR 489 had to consider the question whether a "cash grant" is "property" within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is property".
>
> 13. ....
>
> 14. Article 300A of the Constitution of India reads as under:
>
> "300A Persons not to be deprived of property save by authority of law - No person shall be deprived of his property save by authority of law."
>
> Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

6.1. Contending that there is no ground to decline payment of gratuity and only in cases where termination was on account of an offence involving moral turpitude, it can be declined and no such circumstance is available in this case, the learned counsel appearing for the petitioner relied upon the decision in the case of Jorsingh Govind Vanjari vs Divisional Controller Maharashtra, State Road Transport Corporation, Jalgaon Divison, Jalgaon (C.A.No.11807 of 2016 arising out of SLP (C) No.26366 of 2016 dated 06.12.2016). The relevant observation reads as under:

> "In order to deny gratuity to an employee, it is not enough that the alleged misconduct of the employee constitutes an offence involving moral turpitude as per the report of the domestic inquiry. There must be termination on account of the alleged misconduct, which constitutes an offence involving moral turpitude."

7. The case of the petitioner is not that of a termination, but it is a case of retirement on attaining the age of superannuation. Of course, there are pending charges and if charges are proved and if the proved charges warrant recovery of money, then it can be recovered from any other terminal benefits payable to the petitioner.

8. It is needless to point out that gratuity is payable within a period of 30 days from the date of retirement, as contemplated under Section 7(3) of the Payment of Gratuity Act, 1972.

9. The next issue is whether the respondent is liable to pay interest on account of belated disbursement of gratuity.

10. It is relevant to consider Rule 45-A of the Tamil Nadu Pension Rules, 1978, which deals with interest on delayed payment of gratuity, which is as follows:-

> "45-A. Interest on delayed payment of gratuity - (1) Interest at the rate of eight per cent per annum shall be payable on the death cum retirement gratuity paid beyond (a) period of two months from the date of retirement of a Government Servant.
>
> Provided that on and from the 12th June 1987, the rate of such interest shall be as follows:
>
> (a) seven per cent per annum beyond a period of three months and upto one year; and
>
> (b) ten per cent per annum beyond a period of one year."

From the provisions, it is clear that the gratuity has to be paid along with 10% interest

11. In the result, the respondents are directed to release the gratuity with interest at the rate of 10% p.a. from the expiry of 30 days from the date of retirement till the date of payment, within a period of two weeks from the date of receipt of a copy of this order.

12. With the above direction, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The General Manager (Administration),
Tamil Nadu Civil Supplies Corporation,
10, Thambuswamy Road, Chennai - 10.

2. The Managing Director,
The Tamil Nadu Civil Supplies Corporation,
Chennai - 10.

+1cc to Mr.S.Venkataraman, Advocate, S.R.No. 56329

W.P.No.14639 of 2017

GN(26/09/2018)