

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL

AND

THE HON'BLE MRS.JUSTICE M.NIRMAL KUMAR

W.P.No.13502 of 2018

S.M.Kuppan

... Petitioner

vs.

1.The Principal District Judge,
Dharmapuri District,
Dharmapuri

2.The District Munsif-cum-Judicial Magistrate,
Pennagaram,
Dharmapuri District

3.The State of Tamil Nadu,
rep.by Secretary to Government,
Finance Department,
Secretariat,
Chennai-600 009

4.The Principal Accountant General
(Accounts and Entitlement) Tamil Nadu,
Chennai-600 018

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus, to direct the respondents to pay interest on the terminal benefits of the Petitioner for the period from 31.03.2016 to 03.06.2017 at 18% p.a. based on the representation dated 21.02.2018.

For Petitioner : Mr.M.Selvam

For Respondents : Mr.S.Thangavel for R1 and R2
Mr.Rajendra Prasad,
Additional Government Pleader for R3
Mr.Vijay Sankar for R4

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

The Petitioner has preferred the instant Writ Petition praying for passing of an Order by this Court in directing the Respondents to pay interest on his terminal benefits for the period from 31.03.2016 to 03.06.2017 at 18% p.a. based on his representation dated 21.02.2018.

2.Mr.S.Thangavel, the Learned Counsel takes notice for R1 and R2, the Learned Additional Government Pleader takes notice for R3 and Mr.Vijay Sankar, the Learned Counsel takes notice for R4.

3.Heard both sides.

4.According to the Petitioner, he joined the service of the Judicial Department as a part time ' Machalchi' on 16.07.1980 and his services were regulated. He became a 'Dhalayat' on 10.3.1982. Because of his unblemished service, he was promoted as 'Senior Bailiff' on 01.04.1993. In fact, he retired as 'Special Grade Senior Bailiff' on the Afternoon of 31.03.2016. He had rendered service spanning over a period of 36 years.

5.The Petitioner was allowed to retire from service by the First Respondent/Principal District Judge, Dharmapuri District, Dharmapuri on the Afternoon of 31.03.2016, as per R.O.C.No.2458/2016-A, dated 31.03.2016. The said Order was subject to the result of the complaints pending with the Hon'ble High Court, Madras. As a matter of fact, the Second Respondent/The District Munsif-cum-Judicial Magistrate, Pennagaram, Dharmapuri District, had ordered that the Petitioner's Terminal Benefits will be drawn and paid to him after further proceedings of the First Respondent. It appears that the Petitioner's Terminal Benefits were not disbursed inspite of several requests made in this regard.

6.At this stage, the Learned Counsel for the Petitioner submits that the Petitioner filed W.P.No.7737 of 2017 before this Court, seeking for issuance of necessary directions to disburse his Terminal Benefits. This Court on 20.06.2017, in W.P.No.7737 of 2017 had directed the First Respondent/ Principal District Judge, Dharmapuri District, Dharmapuri to disburse the Petitioner's terminal benefits on or before 04.10.2017 and accordingly, the First Respondent had paid all the benefits by such time.

7.The real grievance of the Petitioner is that he should have received his terminal benefits on 31.03.2016 and as such, he is entitled to claim interest on the amount for the delayed period. In short, the plea of the Petitioner is that he is entitled to claim interest for the period beginning from

31.03.2016 to 03.06.2017. Also that the Petitioner had addressed numerous Representations to the Respondents and finally, he addressed a Representation dated 21.2.2018 to the First Respondent/Principal District Judge, Dharmapuri District, Dharmapuri. However, no action has been taken on the Representations made by him.

8.The Learned Counsel for the Petitioner points out that in the present Writ Petition, the Petitioner has claimed interest at 18% per annum for the period from 31.3.2016 to 03.6.2017 based on his Representation dated 21.2.2018.

9.It transpires that the Petitioner had addressed a communication dated 11.01.2017 addressed to the Registrar General of this Court, whereby and whereunder, he had prayed for issuance of necessary orders for the speedy disposal of the so called two complaints pending against him with the Hon'ble High Court in R.O.C.No.1302/2015/VC(A), dated 31.03.2016.

10.It is to be noted that the Petitioner filed W.P.No.7737 of 2017 against the Principal District Judge, Dharmapuri District, Dharmapuri and two others seeking for issuance of necessary direction to the Respondents for disbursement of Pension and other Terminal Benefits within a fixed time frame. This Court, on 20.07.2017, while disposing of the Writ Petition filed by the Petitioner, at Paragraph Nos.2 to 4, had observed the following:

"2. Since more than one year period has already elapsed from the time the writ petitioner has retired and he being a small time employee having worked as a Special Grade Senior Bailiff, we consider it appropriate to fix time limit for securing the settlement of all terminal benefits of the writ petitioner. Let the same be disbursed on or before 4th of October 2017 and compliance should be filed before the Registrar General of this Court on the Administrative Side by the District Unit Head at Dharmapuri.

3. It is time that all the District Unit Heads be reminded by the Registrar General of this Court that pension and other terminal benefits shall be processed within three months prior to the date of retirement, at least and they should be sent upto the Accountant General's office/Pension Disbursing Authority's office, as the case may be and necessary follow up action should be taken. In case the pension and other terminal benefits have not been settled before a maximum of six months' period from the date of

retirement, a special report shall be filed by the District Unit concerned before the Registrar General drawing specifically his attention to the reasons for the failure to settle the terminal benefits, so that the Registrar General will be able to take corrective measures.

4. It is a constant cry from the retired employees that their terminal benefits were not settled one way or the other and that they were always made to grope in the dark without being aware as to the reasons and the stage, at which, the papers have been stuck. We do not expect a retired employee to be so cash rich to indulge in fairly expensive litigation by engaging lawyers and litigate in this Court. Therefore, the reasons must be communicated to the concerned individual by the District Head/Chief Administrative Officers of the District Unit as to why pension and other terminal benefits have not been settled and the reasons for such delay. If the reasons are attributable to the employee concerned, he shall be reminded once in every month to rectify the defects.

11. After the disposal of the Writ Petition No.7737 of 2017, the Petitioner had addressed a communication dated 21.2.2018 to the Registrar General of this Court, wherein he had prayed for the grant/sanction of interest for the period from 31.03.2016 to 03.06.2017 for 17 months for the delayed payment of his Terminal Benefits. Likewise, he had also addressed a communication to the First Respondent/Principal District Judge, Dharmapuri. Significantly, the Petitioner has not arrayed the Registrar General of this Court even though he had addressed a Communication/Representation, dated 21.2.2018, to the High Court.

12. A bare perusal of the Affidavit filed by the Petitioner in W.P.No.7737 of 2017 shows that the Petitioner, while claiming disbursement of his Pensionary and Terminal Benefits had not staked a claim in respect of interest for the purported delayed payment. Even though such relief of interest the Petitioner would have claimed as he desired, yet he had not claimed interest in the Writ Petition No.7737 of 2017 for the delayed payment of his Pension and other Terminal Benefits. A glance of the Order passed by this Court in W.P.No.7737 of 2017, dated 20.07.2017, filed by the Petitioner also does not refer/speak of any payment of interest for the payment of Pensionary and other Terminal Benefits. Suffice it for this Court to make a pertinent mention, the Petitioner had sought in

W.P.No.7737 of 2017 necessary directions to be issued to the Respondents therein to disburse the Pensionary and other Terminal Benefits within a fixed time limit since he had retired from service on 31.3.2016.

13.A mere running of the eye over the contents of the Letter/Communication addressed by the Petitioner to the First Respondent/Principal District Judge, Dharmapuri, through District Munsif-cum-Judicial Magistrate, Pennagaram, Dharmapuri District, would go to show that in the Reference No.(1) portion, there is a reference to Government Orders, viz., (i)G.O.No.224, Finance Department, dated 7.6.2001 (ii)Government Letter No.120076/gofs;/96-2 Finance Department, dated 21.12.1993 (iii) Government Letter No.39068/gofs;/96-2 102026/ gofs;/98-1 Finance Department, dated 05.06.1995, (iv)Government Letter No.100364/ gofs;/96-1, dated 07.12.1997 in regard to the grant/sanction of interest, if G.P.F. final payment was not paid beyond three months. Also the Petitioner, in his Letter had referred to payment of 12% interest for delayed payment of Gratuity, as per G.O.No.122, Finance Pension Department, dated 20.02.1995 and also mentioned about the Government Letter No.103354/Retirement/87-1, Finance Department, dated 07.09.1987. Besides the above, the Petitioner had referred to Official Memorandum of the Government bearing No.172998/Finance 75-4, Finance Department dated 11.11.1976 and G.O.No.395, Finance Department, dated 29.4.1977.

14.It is to be pointed out that after introduction of explanation to Section 141 C.P.C. provides that the procedure prescribed in the Civil Procedure Code relating to suits shall be followed as far as it made applicable in all proceedings in any Court of Civil Jurisdiction, it shall not include a proceeding under Article 226 of the Constitution of India.

15.As a matter of fact, Order II Rule 2 of the Civil Procedure Code is inapplicable to proceedings under Article 226 of the Constitution of India as per decision L.Kashi Nath Seth V. Collector, Central Excise, Allahabad, AIR 1979 Allahabad 128 (DB). Further, Order II Rule 3 is inapplicable too (vide decision K.B.Manufacturing Company V. Commissioner, Sales Tax, U.P. Lucknow and another, AIR 1965 Allahabad 517 (519)).

16.It is to be noted that an 'Interest' is ordinarily provided which a person is entitled to the principal sum for the profit he might have made, had he used the said money or his expected loss under normal circumstances due to non payment of the same at proper time.

17.In so far as 'Interest' is concerned, the same can be awarded not on general equitable grounds, but only in cases

where the equitable jurisdiction is attracted.

18. Be that as it may, in view of the fact that the Petitioner's Representation dated 21.2.2018 addressed to the First Respondent/Principal District Judge, Dharmapuri, Dharmapuri District, is still pending and not yet disposed of, this Court, without traversing upon the merits and demerits of the matter, at this stage, simpliciter directs the First Respondent/Principal District Judge, Dharmapuri, Dharmapuri District, to earnestly and seriously consider the Representation of the Petitioner dated 21.02.2018 and to dispose of the same by passing a reasoned speaking Order in a dispassionate and unbiased manner (untrammelled and uninfluenced with any of the observations made by this Court) within a period of three weeks from the date of receipt of copy of this Order. If the Petitioner requires any personal hearing, the First Respondent/Principal District Judge, Dharmapuri District, Dharmapuri is directed to provide such opportunity to the Petitioner and it is open to the Petitioner to avail such opportunity before the First Respondent/Principal District Judge, Dharmapuri, to air his point of view in regard to his Representation dated 21.02.2018. After the disposal of the Representation of the Petitioner dated 21.02.2018, within the time determined by this Court. A 'report of compliance' shall be sent to the Hon'ble High Court, Madras, by the First Respondent, by addressing a communication to the Registrar General of High Court, Madras, in this regard without fail.

With the above observations and directions, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msk

To

1. The Principal District Judge,
Dharmapuri District,
Dharmapuri
2. The District Munsif-cum-Judicial Magistrate,
Pennagaram,
Dharmapuri District

3.The Secretary to Government,
Finance Department,
Secretariat,
Chennai-600 009

4.The Principal Accountant General
(Accounts and Entitlement) Tamil Nadu,
Chennai-600 018

5.The Registrar General,
High Court of Judicature at Madras,
Chennai-104.

(for favour of information and necessary follow up action.)

+1cc to Mr.Vijay Shankar, Advocate, S.R.No.35269

+1cc to Mr.M.Selvam, Advocate, S.R.No.35088

W.P.No.13502 of 2018

GMR(CO)
GSP(18/06/2018)



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