

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.P.No.23804 of 2017

The Director,
The Council of Scientific and Industrial
Research, CSIR Campus,
Taramani, Chennai- 113. ..Petitioner

Vs

1.The Registrar,
The Central Administrative Tribunal,
Madras Bench,
City Civil Court Building,
Chennai - 104.
2.N.Muthu ..Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari to call for the records relating to the order passed by the first respondent Tribunal made in O.A.No.310/00159/2015 dated 30.06.2016 and quash the same.

For Petitioner .. Mr.T.Ravikumar

For Respondents.. Mr.V.Ravikumar for R2
R1 - Tribunal

ORDER

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

Challenging the order of the Tribunal dated 30.06.2016, the petitioner has filed the present writ petition.

2.The second respondent was charged for producing bogus certificate on 29.04.2011. He reached the age of superannuation on 30.04.2011. On 01.05.2011, he was paid provisional pension with effect from 01.08.2011 in tune with CCS (Pension) Rules.

3. Writ petition in W.P.No.10985 of 2011 was filed by the petitioner, challenging the order of the Tribunal in T.A.No.39 of 2010. This Court has directed the State Level Scrutiny Committee to look into the matter and pending the decision, it has been held that retiral benefits could not be released. This order passed in the writ petition was preceded by earlier round of litigation between the parties.

4. CSIR (Residence Allotment) Rules, 1997 (hereinafter referred to as 'CSIR Rules') mandates an undertaking from the licensee like the second respondent. As per Rule 19.1 of CSIR Rules, a licensee has to give an undertaking at the time of allotment that he shall vacate the residence on cancellation or deemed to cancellation of allotment failing which, he is liable to pay penal license fee apart from withholding his gratuity and leave encashment etc., Said payment may be released only on furnishing bank guarantee. It shall be discharged after vacating the possession of residence by the licensee by surrendering it to the council and after dues are settled. The second respondent vacated the staff quarters only on 21.11.2011.

5. On 28.03.2014, the State Level Scrutiny Committee held that the community certificate issued to second respondent was genuine. Accordingly, on 12.05.2014, the charge framed against the second respondent was closed. It was followed by payment of terminal benefits along with interest on gratuity by the proceedings dated 19.05.2014. Thus payment of gratuity was made on 09.06.2014. Similarly, encashment of leave was done on 10.06.2014. The pension due was paid on 11.06.2014. Thereafter, on 01.09.2015, interest on delayed payment of terminal benefits from 22.11.2011 to 09.06.2014 on gratuity was paid for a sum of Rs.74,491/-. On 30.06.2016, O.A.No.310/00159/2015 filed by the second respondent was allowed directing the petitioner to pay interest at the rate of 12% from 30.04.2011, which is the date of superannuation. Aggrieved against the said order, the petitioner is before us with this writ petition.

6. Mr. T. Ravikumar, learned counsel appearing for the petitioner submits that as per the Rules, the retired employee is not entitled for interest on the belated payment of pension. He has been paid the provisional pension accordingly at the relevant point of time. Pension could not be paid earlier in view of the pendency of the charges and verification before the State Level Scrutiny Committee. This Court has also approved the action of the petitioner. After the decision of the State Level Scrutiny Committee, due payments have been made immediately. Insofar as payment of gratuity is concerned, it would be accordingly paid as per the Rules. As the second respondent vacated the quarters only on 21.11.2011, for the period between 30.04.2011 and 21.11.2011, no interest is payable on gratuity.

Interest on delayed payment of terminal benefits with respect to gratuity was paid from 22.11.2011 till 09.06.2014. Rules do not prohibit payment of interest on the encashment of leave. This is for the reason that this encashment itself is by way of concession and therefore, not a matter of right. The Tribunal has not considered this aspect while allowing the Original Application. Therefore, the order will have to be interfered.

7. Learned counsel appearing for the second respondent submitted that it is not the fault of the second respondent. Inasmuch as the community certificate was found to be true and genuine, the consequence will have to follow. Though the charge was framed on 29.04.2011, it was served belatedly. The second respondent was allowed to retire. In support of his contention, reliance has been made on the judgment of the Division Bench in Government of Tamil Nadu Vs. M.Deivasigamani ((2009) 3 MLJ 1).

8. We are of the view the Tribunal was not right in allowing the application without considering the facts and law. The Tribunal is expected to consider the Rule governing before passing appropriate orders. As rightly submitted by the learned counsel appearing for the petitioner, due payments have been made including the payment of interest for the delayed release of gratuity in accordance with the Rules. Rules merely provide for payment of provisional pension when the action is pending. In this case, it was paid accordingly. The second respondent did receive the provisional pension. In respect of gratuity, admittedly quarters was vacated on 21.11.2011. Therefore, as per Rule 19.1 of the CSIR Rules, the petitioner is entitled to withhold it. The petitioner has paid the interest on belated payment of gratuity from 22.11.2011 to 09.06.2014, which the second respondent was entitled to. This was paid on 14.07.2016. Insofar as the interest payable on the encashment of leave is concerned, Rule 68 (f) CCS (Pension) Rules states that there is no provision for payment of interest on the delayed payment of leave encashment. This is for the reason that the encashment of leave is the benefit granted under the Leave Rules and not the pensionary benefit. Unfortunately, the Tribunal has not looked into these Rules.

9. The decision relied upon by the learned counsel appearing for the second respondent, in our considered opinion, would militate against him. The Division Bench, while taking note of the judgment of the Apex Court, was pleased to hold that the Court has discretion to pass orders with respect to payment of interest over delayed payment of retiral benefits in the absence of Rule governing. Therefore, when Rules are available dealing with such contingencies, they cannot be ignored by the authorities. After all, a direction cannot be issued by a Court contrary to the Rules. When there are specific rules governing, they alone would be followed by an authority. It is only when

such Rules are not followed, then the relief can be granted by this Court while interpreting them.

10. In such view of the matter, we are not inclined to accept the views expressed by the Tribunal. After all, we are not dealing with the case where retiral benefits were not released. The gratuity was paid and interest was also given for the delayed payment. Insofar as pension, as per the Rules, provisional pension was paid. Rules specifically prohibit payment of interest for the delayed release of pension. The petitioner also cannot be faulted for withholding the pension and other benefits in view of the pendency of the verification before the State Level Scrutiny Committee. Hence we are of the view that the order of the Tribunal cannot be sustained in the eye of law.

11. For the reasons stated above, the order of the Tribunal dated 30.06.2016 stands set aside. Accordingly, the writ petition is allowed. No costs. Connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

The Registrar,
The Central Administrative Tribunal,
Madras Bench,
City Civil Court Building,
Chennai - 104.

+1 CC to Mr. T. Ravikumar, Advocate sr 87688.
+1 CC to Mr. V. Ravikumar, Advocate sr 87779.

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VD(CO)
SP(12/02/2019)