

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.12.2018

Pronounced on : 03.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2821 of 2018
and
CMP.No.23461 of 2018

The President,
SLM.HSG 75, Dharapuram Taluk,
Co-operative Housing Society,
No.8, Anna Nagar,
Dharapuram - 638 656,
Thiruppur District.

...Appellant/2nd Respondent

vs.

1.P.Balasubramanian.

...1st Respondent/Petitioner

2.The Deputy Registrar of Co-operative Societies,
(Housing), Coimbatore Region,
"Chintamani", Coimbatore North,
Coimbatore.

...2nd Respondent/1st Respondent

Prayer : Writ Appeal is filed under Clause 15 of Letters Patent against the order passed in WP.No.37792 of 2015 dated 03.10.2016.

Prayer in WP.No.37792 of 2015:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to pay the terminal benefits of the petitioner amounting to Rs.15,35,000/- along with interest at the rate of 12% per annum from 30.09.2012 till the date of payment

For Appellant	: Mr.R.Venkatachalamoorthy
	For M/s.S.Kadarkarai
For Respondent 2	: Mr. L.P.Shanmugasundaram

J U D G E M E N T

(Order of the Court was delivered by SUBRAMONIUM PRASAD, J)

Aggrieved by an order dated 03.10.2016 passed by the learned Single Judge in WP.No.37792 of 2015, the President, SLM.HSG 75, Dharapuram Taluk, Co-operative Housing Society, Dharapuram - 638 656, Thiruppur District is filing this instant writ appeal.

2. The writ petitioner / Respondent No.1 herein was working with the Co-operative Society with effect from 01.07.1988. He retired from service on 30.09.2012. At the time of retirement he was working as the Secretary of the Society. The Registrar of the Society directed the Appellant Society to submit a final report regarding the payment of retirement benefits. The terminal benefits payable by the management to the writ petitioner are as under:-

a	Provident Fund	Rs.11,11,150.00
b	Gratuity	Rs.4,78,492.00
c	Surrender of Leave Salary	Rs.2,40,144.00
	Total	Rs.18,39,786.00
	Amount paid to the petitioner at the time of retirement	Rs.3,04,786.00
	Balance Payable to the petitioner	Rs.15,35,000.00

3. The terminal benefits were not paid on retirement. The writ petitioner filed the instant writ petition for a direction to pay the terminal benefits of Rs.15,35,000.00 along with the interest at the rate of 12% per annum till the date of payment. The learned Single Judge by the impugned order allowed the Writ of Mandamus and directed the society to pay the amount due to the petitioner with interest at the rate of 9% from the date of retirement to the date of payment. This order is under challenge in the writ petition.

4. The learned Single Judge relied on the decision of the Hon'ble Supreme Court of India in the case of S.K.Dua Vs State of Haryana and other reported in (2008) 3 SCC 44, for grant interest even when the pension rules do not provide on payment of gratuity for delayed payment of pension. It is apt to quote the very same paragraph on which the learned Single Judge placed reliance,

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the

appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

5. The learned Single Judge negatived the contention of the society that the society is unable to give retiral benefit due to the cumulative loss of 2.17 crores for the past ten years.

6. The society filed a Review Petition against the impugned order. The Review petition came to be dismissed on 22.06.2018. The order of the learned Single judge allowing the writ petition is under challenge in the instant writ appeal.

7. Heard the counsel for the appellant.

8. It is well settled and authorities need not be cited for the proposition that pension is not a bounty, but it is deferred wages. It is not payable on the sweet will and pleasure of the Government. It is a valuable right vesting in the Government servant. It is unfair to deny an employee, pension.

9. The Hon'ble Supreme Court of India in the case of D.D.Tewari (dead) Through Legal Representatives Vs. Uttar Haryana Bijli Vitran Nigam Limited & Others reported in (2014) 8 SCC 894 has observed as under:-

" 3. The retiral benefits of the appellant were withheld by the respondents on the alleged ground that some amount was due to the employer. The disciplinary proceedings were not pending against the appellant on the date of his retirement. Therefore, the appellant approached the High Court seeking for issuance of a direction to the respondents regarding payment of pension and release of the gratuity amount which are retiral benefits with an interest at the

rate of 18% on the delayed payments.

4. The learned Single Judge has allowed the writ petition vide order dated 25-8-2010 [CWP No. 1048 of 2010, decided on 25-8-2010 (P&H)] , after setting aside the action of the respondents in withholding the amount of gratuity and directing the respondents to release the withheld amount of gratuity within three months without awarding interest as claimed by the appellant. The High Court has adverted to the judgments of this Court particularly, in State of Kerala v. M. Padmanabhan Nair[(1985) 1 SCC 429 : 1985 SCC (L&S) 278] , wherein this Court reiterated its earlier view holding that: (SCC pp. 429-30, para 1)

"1. [the] pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment [to the employees]."

5. The said legal principle laid down by this Court still holds good insofar as awarding the interest on the delayed payments to the appellant is concerned. This aspect of the matter was adverted to in the judgment of the learned Single Judge without assigning any reason for not awarding the interest as claimed by the appellant. That is why that portion of the judgment of the learned Single Judge was aggrieved of by the appellant and he had filed LPA before the Division Bench of the High Court. The Division Bench of the High Court has passed a cryptic order which is impugned in this appeal. It has adverted to the fact that there is no order passed by the learned Single Judge with regard to the payment of interest and the appellant has not raised any plea which was rejected by him, therefore, the Division Bench did not find fault with the judgment of the learned Single Judge in the appeal and the letters patent appeal was dismissed. The correctness of the order is under challenge in this appeal before this Court urging various legal grounds.

6. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31-10-2006 and the order of the learned Single Judge after adverting to the relevant facts and the legal position has given a direction to

the respondent employer to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgment referred [(1985) 1 SCC 429 : 1985 SCC (L&S) 278] to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent."

10. Similarly, in the case of State of Uttar Pradesh Vs. Dhirendra Pal Sing reported in (2017) 1 SCC 49, the Hon'ble Supreme Court of India has observed as under:-

"9. In State of Kerala v. M. Padmanabhan Nair [State of Kerala v. M. Padmanabhan Nair, (1985) 1 SCC 429 : 1985 SCC (L&S) 278] , this Court has held that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on the retirement but are valuable rights in their hands, and any culpable delay in disbursement thereof must be visited with the penalty of payment of interest. In the said case the Court approved 6% p.a. interest on the amount of pension decreed by the trial court and affirmed [State of Kerala v. Padmanabhan Nair, 1983 SCC OnLine Ker 205 : 1984 KLT 542] by the High Court. As to the rate of interest on amount of gratuity, in Section 7(3-A) of the Payment of Gratuity Act, 1972, it is provided that if the amount of gratuity payable is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may by notification specify. It further provides that no such interest shall be payable if the delay in payment is due to the fault of the employee, and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground. In the present case, there is no plea before us that the appellants had sought any permission in writing from the controlling

authority. As to the delay on the part of the employee, it has come on the record that he made representations, whereafter he filed a suit in respect of withheld amount of gratuity and pension. In Y.K. Singla v. Punjab National Bank [Y.K. Singla v. Punjab National Bank, (2013) 3 SCC 472 : (2013) 1 SCC (L&S) 640] , this Court, after discussing the issue relating to interest payable on the amount of gratuity not paid within time, directed that interest @ 8% p.a. shall be paid on the amount of gratuity."

11. In view of the settled position, the order issued by the learned single Judge does not call for the interference. The writ appeal is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

pkn/gsp

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Deputy Registrar of Co-operative Societies,
(Housing), Coimbatore Region,
"Chintamani", Coimbatore North,
Coimbatore.

+1cc to Mr.S.Kadarkarai, Advocate, S.R.No.1276/19
+1cc to the Government Pleader, S.R.No.1026/19

W.A.No.2821 of 2018

ssd(CO)
kak(29/01/2019)