**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**
**DATED : 30.08.2018**
**CORAM:**
**THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN**
**W.P.(MD)No.7022 of 2015**

Mariappan ... Petitioner

Vs.

1. The Managing Director,
Tamil Nadu Co-operative Milk
Producers Federation Limited,
Revenue Department,
Avin Illam, Mathavapuram,
Milk Colony,
Chennai.

2. The Accounts Officer,
Tamil Nadu Co-operative Milk Producers
Federation Limited,
Employees Gratuity Fund Trust,
Avin Illam, Mathavapuram,
Milk Colony,
Chennai.

3. The General Manager,
Madurai District Co-operative
Milk Producers Union Ltd.,
Madurai-20. ... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd and 3rd respondents herein to pay interest to the petitioner at the rate of 12% per annum for the belated payment of Rs.6,94,866/- towards his retirement benefit of Gratuity from the date of retirement ie., on 29.02.2012 to the date of full settlement ie., 17.06.2014 within a time stipulated by this Court.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.M.Murugan
Government Advocate

**ORDER**

The petitioner seeks for a Writ of Mandamus, directing the 2nd and 3rd respondents herein to pay interest to the petitioner at the rate of 12% per annum for the belated payment of Rs.6,94,866/- towards his retirement benefit of Gratuity from the date of retirement ie., on 29.02.2012 to the date of full settlement ie., 17.06.2014 within the time stipulated by this Court.

2.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

3.The sum and substance of the issue on hand is that the petitioner joined as Operator (Technical) in the third respondent office on 12.11.1978 and thereafter, he was promoted as Extension Officer on 06.05.1981 and thereafter, he attained the age of superannuation. The petitioner having rendered 34 years of service, was entitled to get gratuity and that the gratuity was paid to the petitioner on 17.06.2014 and there was a delay of 27 months, for which, the petitioner has approached this Court seeking interest on the belated payment.

4.The contention of the petitioner is that the retirement benefits ought to have been paid on the date of retirement or at least, reasonably within a short period immediately after retirement. It is further pointed out that as the payment was not made so, but made belatedly, the respondent is liable to pay interest.

5.The learned counsel for the petitioner relied upon the following provisions of law and the reported decisions and contended that if the payment is not duly made in accordance with the time prescribed, under the Law, then the petitioner is entitled to claim interest.

6.It is appropriate to consider those provisions and decisions. Pointing out that it is imperative for the respondents

(a) to keep in mind the time schedule prescribed in the rules/instructions;

(b) to initiate various steps towards grant of retirement benefits well in advance prior to the date of retirement;

(c) to realize that there is liability even to pay compound interest and

(d) to pay interest even in the absence express provisions, the following decisions are relied upon:-

(i)In the case of ***Government of India vs. M. Deivasigamani*** , reported in ***2009 (3) MLJ***, this Court has held as follows:-

> "The contention of the appellant that as per the Government norms, interest can be paid only on Death-cum-Retirement Gratuity, in case of delay and the same cannot be awarded to any other retiral benefits, ***is not tenable,*** in view of the decision of the Supreme Court in S.K.Dua v. State of Haryana reported in 2008 (3) SCC 44. "

(ii)In the decision in **Uma Agrawal vs State Of U.P. And Anr. reported in 1999 (3) SCC 438, the Hon'ble Supreme Court held as under:-**

> "We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. **This we have done to remind the**

**various Governmental Departments of their duties in initiating various steps at least two years in advance of the date of retirement.** If the Rules/instructions are followed strictly much of the litigation can be avoided and retired Government servants will not feel harassed because, afterall, grant of pension is not a bounty but a right of the Government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring ever in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. **In cases where a retired Government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the Rules/instructions apart from other relevant factors applicable to each case."**

**(iii)** In the case of ***Vijay L. Mehrotra v. State of U.P. & Ors reported in JT 2000 (5) SC 171***, the Hon'ble Supreme Court had granted interest on, inter alia, the delayed payment of the ***leave encashment amount*** at the rate of 18% per annum. The relevant portion of the said Supreme Court decision is as under:-

"2. The appellant retired from service on 31st August, 1997. From the response, filed by the respondent, it is clear that most of the payments of the retiral benefits to her were made long after she retired on 31st August, 1997. The details of the payments so made are as under:

| S.No. | Particulars | Amount Paid | Date |
|---|---|---|---|
| (i) | GPF 90% | Rs. 1,80,899.00 | 27.11.1997 |
| (ii) | GPF 10% | Rs. 20,751.00 | 25.04.1998 |
| (iii) | GIS | Rs. 13,379.00 | 27.02.1998 |
| (iv) | Enchashment of leave | Rs. 41,358.00 | 27.09.1998 |
| (v) | Arrears of pay | Rs. 15,495.00 | 27.09.1998 |
| (vi) | Gratuity | Rs. 1,09,753.00 | 05.12.1998 |
| (vii) | Commuted pension | Rs. 20,484.00 | 05.12.1998 |
| (viii) | Detained amount | Rs. 45,000.00 | 05.11.1999 |

**7.** The further contention of the learned counsel for the petitioner is that even in the absence of rules/administrative instructions or Government orders, the petitioner is entitled to get interest based upon the provisions of the constitution and in order to support the proposition, the following decision is relied upon:-

**(i) In *S.K. Dua vs State Of Haryana & Anr* reported in 2008 (3) SCC 44, the Hon'ble Supreme Court has held as follows:-**

"............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 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 ................."

**8.**The statutory rules providing for payment of interest is under Rule 45-A of the Tamil Nadu Pension Rules, 1978 and Section 8 of the Payment of Gratuity Act and those reference are extracted for easy reference.

"[(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:

**Provided further that on and from 20th February 1995, the rate of such interest shall be twelve percent per annum (compounded annually): Provided also that on and from 1st April 2004, the rate of such interest shall be at the rate of interest payable, on General Provident Fund during the year of retirement of the Government servant (compounded annually): Provided also that no such interest shall be payable,-**

(a) where the institution of departmental or judicial proceeding against the retiring Government servant concerned is pending; and

(b) for the fraction of a month.]
[(1-A). The period beyond which such interest is payable shall be as follows.-

(i)in the case of a Government servant retired otherwise on superannuation and where the Death-cum-Retirement Gratuity is withheld on account of disciplinary proceeding pending against him.-

(a) three months from the date of retirement where the Government servant is exonerated of all charges and where the Death-cum-Retirement Gratuity is paid on the conclusion of disciplinary proceedings;

(b) three months from the date of death where the disciplinary proceedings are dropped on account of death of a Government servant;

(c) three months from the date of issue of orders by the competent authority allowing payment of Death-cum-Retirement Gratuity where the Government servant is not fully exonerated on the conclusion of disciplinary proceedings and where the competent authority desires to allow payment of Death-cum-Retirement Gratuity;

(ii)six months from the date of retirement of a Government servant otherwise than on superannuation under Fundamental Rule 56(2) or 56(3) or Rules 33, 36, 38, 39 and 42 of the Tamil Nadu Pension Rules, 1978;

(iii)six months from the date of death of a Government servant while in service and where the delay is not caused on account of more than one claimant;

(iv)three months from the date of issue of orders revising the emoluments where the amount of Death-cum-Retirement Gratuity already paid is enhanced on account of revision of emoluments; and

(v)six months from the date of absorption in the case of permanent absorption in the Public Sector Undertakings or Autonomous bodies otherwise than on enmass transfer on conversion of Government department or a part thereof into Public Sector Undertakings or Autonomous bodies.]
[(2) The Government shall be the authority competent to sanction such interest.]"

9.Sections 7(3) and (3A) r/w. notification under Section 7(3A) of the Payment of Gratuity Act, 1972 read as under:-

"7(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A)If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the 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:

Notification under Sec.7(3A)

S.O.874.- In exercise of the powers conferred by sub-section (3A) of Section 7 of the Payment of Gratuity Act, 1972, (39 of 1972), the Central Government hereby specifies ten per cent per annum as the rate of simple interest payable for the time being by the employer to his employee in cases where the gratuity is not paid within the specified period.

2.This notification shall come into force on the date of its publication in the Official Gazette."

10.Section 8 of the Payment of Gratuity Act, 1972, enables payment of interest in case of delayed payment subject to the condition that such **interest shall not be more than the gratuity amount.** The said section is as follows:-

**"Section 8. Recovery of gratuity.-**

If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon [at such rate as the Central Government may, by notification, specify,] from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

[Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.]

It was held by the Honble Apex Court, while construing Section 8 of the said Act in <u>H.Gangathanume Gowda vs. Karnakata Agro Industries Corporation Ltd.,</u> [(2003) 1 LLJ 1119 (SC)] that, if the **employer has not paid gratuity, there is a liability even to pay compound interest.**

11.The contention of the respondent is that as per Section 7(1) of the Payment of Gratuity Act, 1972(hereinafter referred as 'the Act'), the petitioner should have made a request to the respondent for claiming gratuity, but he has not done so, hence, the petitioner would not be entitled to get any interest. Sections 7(1) and 7(2) are as follows:

"7.Determination of the amount of gratuity.-(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2)As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also the controlling authority specifying the amount of gratuity so determined."

12.It is a beneficial enactment, which cannot be read in isolation and an harmonious reading has to be given. It is no doubt that in terms of Section 7(1) of the Act, the petitioner will have to make an application for the purpose of payment of Gratuity to enable the employer to deposit the principal amount with the controlling authority, if the employee has not turned up or admitted the amount and it is for the employee to approach the controlling authority to seek for withdrawal. Reading of Sections 7(2) and 7(3) of the 'Act', would make it very clear that it is duty bound on the employer to deposit the amount and is liable to pay the interest for belated payment of deposit. Sections 7(3-A) of the Act deals with the rate of interest and Section 8 of the Act deals with the date of recovery viz., at the time of recovery, the interest will be apportioned on higher side.

13.As there is a delay in payment of gratuity and that the employer has not deposited the amount with controlling authority, the petitioner would be entitled to get interest at the rate of 10% p.a., for the belated payment. Accordingly, the respondents are directed to pay the interest due (at rate of 10% p.a.) on the retirement dues already paid, within a period of two months from the date of receipt of a copy of this order, failing which, the default interest would be 15% p.a. This Court makes it very clear that if the interest amount is not paid within the time stipulated by this Court, the amount can be recovered from the personal funds of the General Manager. If the petitioner is entitled to get gratuity, it has to be calculated based on last drawn wages. If the petitioner was eligible for promotion the gratuity will have to be calculated taking into account the wages payable and the gratuity will have to be paid accordingly.

14.In view of the above, this Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-III)

To
1. The Managing Director,
   Tamil Nadu Co-operative Milk
   Producers Federation Limited,
   Revenue Department,
   Avin Illam, Mathavapuram,
   Milk Colony,
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2. The Accounts Officer,
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   Chennai.

3. The General Manager,
   Madurai District Co-operative
   Milk Producers Union Ltd.,
   Madurai-20.

+1cc to M/s.J.Lawrance,Advocate Sr.No.81371

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KM/PM/SAR3/20.12.2018/8P/4C

**W.P.(MD)No.7022 of 2015**
**30.08.2018**