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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.06.2019

PRONOUNCED ON: 21.06.2019

CORAM:

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.NO.25695 OF 2007

Mr.Siva Kalaimuthu

.. Petitioner

Vs

The Director of School Education
College Road
Chennai 6.

.. Respondent

Prayer:

Writ Petitions has been filed Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records of the respondent in connection with the impugned order passed in Mu.Mu.No.11990/R1/E3/2005 dated 26.06.2007 and quash the same and direct the respondent to pay interest @ 12% p.a. from 01.01.1998 till the date of realization for the belated settlement of the General Provident Fund, Surrender Leave and Special Provident Fund within a reasonable time.

For Petitioner : Mr.K.Venkata Ramani
Senior Counsel
For Mr.M.Muthappan

For Respondent : Mr.Akhil Akbar Ali,
Government Advocate

O R D E R

The instant writ petition is for an appropriate writ, calling for the records of the respondents in connection with the demand of the petitioner for interest of 12% for the belated payment of terminal benefits to the petitioner.

2. The petitioner entered the service as Junior Assistant. He was promoted as an Assistant. At the time of entering into service, the petitioner had given his date of birth as 12.09.1939, claiming that his date of birth is 29.07.1941. The petitioner wanted to get his date of birth amended. Since there was no response, the petitioner filed O.S.No.313/92 dated 26.11.1993, in the District Munsif Court, Kulithalai, for a



declaration that his date of birth is 29.07.1941 and for a mandatory injunction to correct his date of birth in the college and service registers. The suit was decreed on 26.11.1993. The judgment has become final for the reason that the appeal filed by the State challenging the decree was rejected. Since the decree was not executed, the petitioner filed an Execution Petition No.271/91 for a direction to implement the order of Civil Court in O.S.No.313/92.

3. The petitioner filed O.A.No.7500/97 in the Tribunal for execution of the decree. The Government accepted the prayer and issued G.O.Ms.No.418, School Education (R2) Department, accepting the Civil Court decree regarding the alteration of date of birth and further directing the writ petitioner to continue the service beyond 30.09.1997. However, the date of birth has not altered. O.A.No.7500/97 was dismissed. On the dismissal of O.A.No.7500/97, Government issued another G.O.Ms.No.487 School Education Department dated 27.11.1997, canceling the earlier G.O.Ms.No.418, dated 30.09.1997.

4. This order in G.O.Ms.No.487, School Education Department, dated 27.11.1997, canceling earlier G.O.Ms.No.418, dated 30.09.1997, order was challenged by the petitioner in the Tribunal in O.A.No.10001 of 1997. Though the Tribunal stayed the operation of the G.O.Ms.No.487 School Education Department, dated 27.11.1997, but the Tribunal did not permit the petitioner to join in his duty and serve the department for the remaining period.

5. The O.A.No.10001 of 1997 was finally dismissed by the order dated 04.04.2003. While dismissing O.A.No.10001 of 1997, the Tribunal observed that the petitioner was entitled to pay for the period during the period he actually worked. The Tribunal held that the petitioner is also entitled to get all the terminal benefits due to him and interest for the belated payment. The petitioner was due to retire on 30.09.1997 as per his earlier date of birth and the petitioner was relieved from the service on 27.11.1997. The Tribunal by its order dated 04.04.2003, directed the applicant to receive interest at 12% per annum from 01.01.1998 till the date of payment. The Tribunal therefore restricted relief only to the portion of interest. The order of Tribunal has not been implemented.

6. The petitioner states that he was granted interest for gratuity and commutation of pension, but he has not been given interest for the Special Provident Fund, Surrender Leave, interest corresponding to the General Provident Fund. The petitioner states that in terms of the order dated 04.04.2003, passed by the Tribunal in O.A.No.10001 of 1997, the petitioner would have been entitled to receive interest from 01.01.1998



till the date of payment.

7. The petitioner would state that the order of Tribunal has not been implemented. The petitioner thereafter filed a representation on 26.10.2006. The representation was not disposed of. The petitioner therefore filed a Writ Petition No.7699 of 2007, seeking a Writ of Mandamus directing the respondent to pass orders on his representation within a reasonable time. This Court by an order dated 11.03.2000, directed the respondent to pass order within a period of eight weeks from the date of receipt of a copy of the order.

8. The Government by an order dated 26.06.2007, rejected the claim for interest on the grounds that there is no provision to pay interest for Gratuity, Surrender Leave, General Provident Fund, and Special Provident Fund. It is this order has been passed in G.O.Ms.No.122, Finance dated 20.02.1995. It is this which is under challenge in the instant writ petition.

9. Heard the counsel for the parties.

10. Mr.K.Venkata Ramani, learned Senior Counsel for the petitioner has submitted that the petitioner was entitle to receive interest in terms of the order of the Tribunal. According to him, this issue is well settled and there are number of judgments which have been passed directing payment of interest⁵. As correctly submitted by the learned counsel for the petitioner this issue is no longer res integra.

11. The Hon'ble Supreme Court of India in the case of Dr.Uma Agrawal Vs. State of Uttar Pradesh & Another, reported in (1999) 3 SCC 438 observed as under:-

"grant of pension is not a bounty but a right of the government servant. The 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 even 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. "

12. Similar view has been taken by the Hon'ble Supreme Court of India in the case of S.K.Dua Vs. State of Haryana & Another, reported in (2008) 3 SCC 44, has observed as under:-



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"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."

13. This Court has directed to pay the interest at the rate of 12% per annum for the belated payment of pension, death cum retirement gratuity, encashment of New General Provident Fund, Special Provident Fund and pay fixation of arrears in W.A.No.886/07, in the case of Government of Tamil Nadu & Other Vs. M.Deivasigamani. There are few other judgments also in which interest has been paid.

14. Apart from the above said judgments, in any event, the Tribunal in O.A.No.10001/97 dated 04.04.2003 has directed the respondent to pay interest at 12% per annum for the belated payment of the terminal benefits. The same is extracted here under:-

"In fact the applicant filed MA.211/2001 and in spite of the direction given by this Tribunal directing disbursement of terminal benefits due to the applicant, it seems terminal benefits have not been disbursed. Therefore, the applicant is entitled for interest at 12% per annum from 01.01.1998 till the date of payment. Only this relief with regard to interest is given and the application is otherwise dismissed."

15. This order has not been challenged and therefore it is duty of the department to comply with the order of Tribunal. In view of the same, the respondent is directed to pay interest at 12% per annum from 01.01.1998 till the date of realization for the delayed settlement towards General Provident Fund, Surrender



Leave and Special Provident Fund, within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is allowed. No Costs.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Pkn

To

The Director of School Education,
College Road,
Chennai 6.

+1cc to the Government Pleader, S.R.No.52324

WP.No.25695 of 2007

NRJK(CO)
CS/28/08/2019