IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2019

CORAM :
THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.17431 of 2008

J.Dhanusu ...Petitioner

Vs

The Assistant Elementary Educational Officer,
Mayilam Block at Kooteripattu,
Tindivanam Taluk, Villupuram District,
Pin Code 604 302. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to pay interest to the petitioner on the belated payment of Rs.4,07,202/- under the Teacher Provident Fund for the period from 01.07.2007 to 17.06.2008 at the admissible rate.

For Petitioner : Mr.P.Mohanraj

For Respondents : K.Karthikeyan
Government Advocate.

O R D E R

The present Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the respondent to pay interest to the petitioner on the belated payment of Rs.4,07,202/- under the Teacher Provident Fund for the period from 01.07.2007 to 17.06.2008 at the admissible rate.

2. Learned Counsel appearing for the petitioner submitted that the petitioner retired from service as Headmaster, Panchayat Union Elementary School, Alagramam Colony, Mayilam Block, Villupuram District on 30.6.2007. While in service, he was a subscriber to the Teachers Provident Fund by making all the subscriptions in time. Therefore, the amount payable to the petitioner under the Teachers Provident Fund is bound to be paid on the date of retirement or within reasonable time. Referring to 45-A of the Tamil Nadu Pension Rules, 1978, the learned Counsel for the petitioner submitted that interest at the rate of 8 per cent per annum shall be payable on the death-cum-retirement gratuity paid beyond the period of two months from

the date of retirement of a Government Servant, provided that on and from 12th June 1987, the rate of such interest shall be 7% p.a. beyond a period of three months and up to one year and 10% p.a. beyond a period of one year. But in the present case, since the petitioner retired from service on 30.06.2007 and a sum of Rs.4,07,202/- which is due to the petitioner under the Teachers Provident Fund was paid to him only on 17.06.2008 with a delay of one year as per Rule 45-A of the Tamil Nadu Pension Rules, 1978, the respondent is liable to pay interest at 7% p.a. on Rs.4,07,202/-.

3. In support of his submission, the learned Counsel for the petitioner also relied on a decision of a Division Bench of this Court in W.A.No.1272/2017 dated 20.10.2017 (The Commissioner, Corporation of Chennai, Rippon Building, EVR Salai, Chennai-3 and another vs. E.Manickam) wherein it is held that the retiral benefits such as General Provident Fund, GIS, Encashment of Leave, Arrears of pay, Gratuity and Commuted value of Pension are to be paid on the date of retirement or soon thereafter. If for some unforeseen circumstances, the payments could not be made on the date of retirement, interest at the rate of 18% on the belated payment from the date of retirement till the actual payment should be made.

4. The learned Counsel for the petitioner further submitted that in the present case, though admittedly the respondent has paid the Teachers Provident Fund of Rs.4,07,202/- only on 17.06.2008 when the petitioner retired on 30.06.2007 as Headmaster from Panchayat Union Elementary School, Alagramam Colony, Mayilam Block, Villupuram District, a direction should be issued to the respondent to pay the interest at 7% p.a. on the belated payment of Rs.4,07,202/- under the Teacher Provident Fund from 01.07.2007 to 17.06.2008.

5. No Counter Affidavit has been filed by the respondent.

6. Though the Writ Petition is of the year 2008, the respondent never bothered to file any counter affidavit. However, Mr.K.Karthikeyan, learned Government Advocate appearing for the respondent submitted that there is only a short delay of one year. But Rule 45-A of the Tamil Nadu Pension Rules, 1978, mandates that interest at the rate of 8 per cent per annum shall be payable on the death-cum-retirement gratuity paid beyond the period of two months from the date of retirement of a Government Servant. Therefore, it is relevant to extract Rule 45-A of the Tamil Nadu Pension Rules, 1978 here under :

> ''[45-A. Interest on delayed payment of gratuity:
> [(1) Interest at the rate of eight percent 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 percent per annum beyond a period of three months and upto one year; and
(b) ten percent 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 t hat 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''.

7. Moreover, the judgment referred to by the learned Counsel for the petitioner in W.A.No.1272/2017 dated 20.10.2017 also clearly indicates that the payment of pension is no act of grace or bounty on the part of anyone. That is a right earned by the Government Servant, in recognition of his past services. That is the reason why payment of pension to the Government servants has come to be recognized as a event of deferred payment for the quality of services rendered by such men. It is relevant to extract the relevant portion of that judgement hereunder :

''16. Let me now consider some of the decisions, in support of the relief sought for in the writ petition, i.e. payment of interest.
(i) In Dr.Uma Agarwal v. State of U.P., reported in (1999) 3 SCC 438, the Supreme Court held that,
''...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.''
(ii) In Vijay L. Mehrotra v. State of U.P., reported in 2000 (2) SLR 686, the appellant therein retired from service on 31st August 1997. The retiral benefits, such as, GPF, GIS, Encashment of Leave, Arrears of Pay, Gratuity and Commuted value of

Pension, were paid long after she retired. Observing that in case of an employee, retiring after having rendered service, it is expected that all the payments of the retiral benefits should be paid, on the date of retirement or soon thereafter, if for some unforeseen circumstances, the payments could not be made on the date of retirement, the Hon'ble Supreme Court directed the respondent therein to pay to the retired employee, interest at the rate of 18% on the belated payment from the date of retirement, till the actual payment was made.'

....

18. Payment of pension is no act of grace or bounty on the part of anyone. That is a right earned by the Government servant, in recognition of his past services. That is the reason why payment of pension to the Government servants has come to be recognized as an event of deferred payment for the quality of services rendered by such men. After all, the State Government promises certain services to its citizens and secures delivery of such services to the citizens by employing Government servants. Therefore, in recognition of such services rendered to the citizens, the State undertakes to pay monthly pension to such retired Government servants, also as a measure of social security. Any delay in settling such terminal benefits has to be viewed seriously.''

8. In the light of the above ruling position and also the law laid down by the Hon'ble Division Bench of this Court in the above referred judgment, when the case of the petitioner is seen, he was allowed to retire from service on reaching the age of superannuation on 30.06.2007 as Headmaster, Panchayat Union Elementary School, Alagramam Colony, Mayilam Block, Villupuram District. But, when the petitioner has been making regular subscriptions under the Teachers Provident Fund, the respondent should have paid the sum of Rs.4,07,202/- due to the petitioner on the date of his retirement, namely, on 30.06.2007. But it has been paid by the respondent to the petitioner only on 17.06.2008. Therefore, there was a delay of one year. Hence, the Rule 45-B of the Tamil Nadu Pension Rules, 1978 as above mentioned would play against the respondent.

9. Therefore, the Writ Petition stands allowed and the respondent is directed to pay interest at the rate of 7% on the belated payment of Teachers Provident Fund of Rs.4,07,202/-, within a period of two weeks from the date of receipt of a copy of this Order. Further, since there has been an apparent error committed on the part of the respondent in making payment of Teachers Provident Fund, this Court is inclined to impose a cost

of Rs.10,000/- to be paid along with the interest to the petitioner.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

tsi

To

The Assistant Elementary Educational Officer,
Mayilam Block at Kooteripattu,
Tindivanam Taluk, Villupuram District,
Pin Code 604 302.

+1cc to Mr.P.Rajendran, Advocate, S.R.No.20456
+1cc to the Government Pleader, S.R.No.80524

W.P.No.17431 of 2008

KS(CO)

RRS(09/04/2019)