IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23/10/2019

C O R A M

The Honourable Mr.Justice SUBRAMONIUM PRASAD

Writ Petition No.19712 of 2013

S. Anantharaman ... Petitioner

Vs

1. The Commissioner
Corporation of Chennai
Chennai 600 003.

2. The Superintending Engineer
Solid Waste Management Department
Corporation of Chennai
Chennai 600 003. ... Respondents

Prayer Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondent to release forth the entire 25% of DCRC together with a reasonable interest or at least 12% p.a., with a reasonable time frame.

For petitioner ... Ms.Kanimozhimathi
For respondents ... Dr.C.Ravichandran

- - - - -

O R D E R

Instant writ petition has been filed to direct the respondent to release forth the entire 25% of DCRC together with a reasonable interest or at least 12% p.a., within a reasonable time frame.

2. Brief facts of the case are as follows:-

Petitioner was retired as an Assistant Executive Engineer in the Corporation of Chennai, on 31/7/2004. On his retirement, 25% of gratuity was withheld, on account of some audit objections. Ultimately, audit objections were cleared and nothing was found due and payable by the petitioner as found in the audit objection. Commissioner, Corporation of Chennai, has issued a cheque, bearing No.950654, dated 4th August, 2017, drawn on Indian Overseas Bank, Chennai, for a sum of Rs.65,377/- (Rupees Sixty Five thousand three hundred and seventy seven only), towards Death-cum-Retirement benefits. Since the said amount did not include the interest component, petitioner has come forward with the instant writ petition, praying for the relief as stated therein.

3. Commissioner, Greater Chennai Corporation, has filed a counter. The first respondent, placed reliance on G.O.Ms.No.104, MAWS Department, dated 8/7/2005. As per the said G.O., Government has granted power to -

(i). initiate departmental disciplinary action against the individuals, those who are having audit objections pending against them at the time of retirement;

(ii). withhold 25% of DCRG amount for the audit objections pending and the same will be released after the deletion of the audit objection;

(iii). withhold 100% of DCRG amount, in cases where the value of audit objection is more than the DCRG amount to the settled to the individual; and

(iv). this order will be applicable to all the staffs, irrespective of their class or cadre or category.

It is therefore, stated that in view of the said fact that DCRG was withheld and therefore, no amount need be paid on the delayed payment of gratuity.

4. Heard Mr.Kanimozhimathi, learned counsel for the petitioner and Dr.C.Ravichandran, learned counsel for the respondents.

5. Section 7 of the Payment of Gratuity Act, 1972 deals with determination of the amount of gratuity. Section 7 (3-A) reads as under:-

> "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:
>
> Provided that no such interest shall be payable if the delay in the 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."

6. A bare reading of the above would show that if there is any delay in payment of gratuity, then interest is liable to be paid by the employer. A similar issue arose in this Court, in W.A.No.1272 of 2015, wherein this Hon'ble Court, by an order, dated 20/10/2017, confirmed the judgment of the learned Single Judge, who had granted 12% interest on the delayed payment of pension and DCRG.

> "17. The Tamil Nadu Pension Rules, 1978, is applicable to government servants, appointed to service and posts, in connection with the affairs of the State, which are borne on pensionable establishments, whether temporary or permanent, but shall not apply to certain persons. As per Rule 3(1)(i), 'Gratuity' includes (i) 'service gratuity' payable under sub-rule (1) of Rule 43; (ii) 'death-cum-retirement gratuity' payable under sub-rule (1) of sub-rule (3) of rule 45; and (iii) 'residuary gratuity' payable under sub-rule (2) of rule 45. Rule 3(1)(p) defines the words, 'retirement benefits', which includes pension or service gratuity and death-cum-retirement gratuity, wherever it is admissible. Pension Rules also deal with family pension, commutation value, duty allowance, etc.
>
> 18. Rule 9 of the Tamil Nadu Pension Rules, 1978, deals with right of government to withhold or withdraw pension, during the pendency of any disciplinary proceedings or judicial proceedings or if there is any pecuniary loss caused to the Government and if he is ultimately found guilty of misconduct or negligence. Rule 45 of the said Rules deals with Death-cum-Retirement Gratuity and it states that a Government, 'who has completed five years' qualifying service and has become eligible for service gratuity or pension under rule 43, shall, on his retirement be granted death-cum-retirement gratuity, as in the table provided in the said Rule. Rule 46-A enumerates instances, for which, the person can be debarred from receiving gratuity.
>
> 19. Rule 68 of the Pension Rules deals with authorisation of final pension and balance of gratuity by the Audit Office. As per sub-rule (3) of the said rule, the Audit Officer shall authorise the payment of balance of the gratuity after adjusting the amount, if any, outstanding against the retired

government servant and if such balance is payable in his circle of audit, the Audit Officer shall prepare an order for its payment. Insofar as government dues are concerned, Rule 70 of the Tamil Nadu Pension Rules deals with recovery and adjustment of government dues and it reads as follows:

"(1) It shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement.

(2) Where a retiring Government servant does not clear the Government dues and such dues as ascertainable.

(a) an equivalent cash deposit may be taken from him; or

(b) out of the gratuity payable to him an amount equal to that recoverable on account of ascertaining Government dues shall be deducted therefrom.

NOTE:- The expression "ascertainable Government dues" includes balance of house building or conveyance advance, arrears or rent and other charges pertaining to occupation of Government accommodation, over-payment of pay and allowances and arrears of income-tax deductable at source under the Income-tax Act, 1961 (43 of 1961). It also includes dues to the local bodies or to the Staff Co-operative Societies comprising of Government Servants and registered under the Tamil Nadu Co-operative Societies Act, 1961 or to the Tamil Nadu Housing Board or to the Corporation owned/controlled by the State Government."

20. Though Mr.V.C.Selvasekaran, learned counsel for the appellants further submitted that certain clarifications have been sought for, from the Government, for payment of interest, on delayed payment, in the light of the decisions, stated supra, more so, in the case of S.K.Dua's case (cited supra), interest ordered on belated payment is justifiable.

21. In view of the above, this Court finds no infirmity in the order of the writ Court, ordering 12% interest on the belated payment of pension and DCRG. Hence, the same is confirmed.

7. In view of Section 7 of the Payment of Gratuity Act, 1972, and the decision cited above, the Writ Petition is allowed. Respondents are directed to pay interest amount of Rs.65,377/- (Rupees Sixty Five thousand Three Hundred and Seventy Seven only), at the rate of 10% p.a, from 30/8/2004 till 4/8/2017. The amount may be paid, within a period of twelve weeks, from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

mvs

To

1. The Commissioner
Corporation of Chennai
Chennai 600 003.

2. The Superintending Engineer
Solid Waste Management Department
Corporation of Chennai
Chennai 600 003.

+1cc to Mr.C.Ravi Chandran, Advocate, SR.No.88857.
+1cc to M/s.Kanimozhi Mathi, Advocate, SR.No.88586.

Writ Petition No.19712 of 2013

LN (CO)
CSR(11/12/2019)