

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2019

CORAM :

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.47 of 2013

P.Venkatarajan

... Petitioner

Vs.

1. The Principal Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St.George, Chennai - 9.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai - 5.
3. The Director of Local Fund Audit,
'Kuralagam', Chennai - 108.
4. The Commissioner,
Uthagamandalam Municipality,
Uthagamandalam, Nilgiris District.
5. The Commissioner,
Corporation of Erode,
Erode.

(R5 is impleaded as per order dated 15.03.2019
made in M.P.No.1 of 2014 in W.P.No.47 of 2013 by SPJ)

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India, praying in the nature of Writ of Mandamus, directing the respondent to call for the records of the respondents herein to sanction the retirement benefits namely Superannuation Pension (regular pension), commutation of pension, Death-cum-Retirement Gratuity (DCRG) along with interest @ 18% p.a within a reasonable time that may be fixed by this Court.

For Petitioner : Mr.R.Venkataraman, Senior Counsel
for M/s.M.Muthappan

For R1 to R3 : Mr.Akhil Akbar Ali,
Govt.Advocate

For R4 : No appearance

For R5 : Notice not ready

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O R D E R

The instant Writ Petition has been filed for the issuance of a Writ of Mandamus, to call for the records of the respondents herein to sanction the retirement benefits viz., Superannuation Pension (regular pension), Commutation of Pension, Death-cum-Retirement Gratuity (DCRG) along with interest @ 18% p.a within a reasonable time that may be fixed by this Court.

Brief facts leading to the instant petition are as follows:-

2. The petitioner was appointed as Junior Assistant in Tiruppur Municipality on 18.09.1963. He reached the age of superannuation on 28.02.2001 on which date, he was working as Assistant Revenue Officer. The petitioner has therefore, rendered a qualifying service of 37 years, 4 months, and 3 days and therefore, entitled to the pensionary benefits. On the date of retirement, there was no criminal case or any disciplinary proceedings pending against him. The petitioner was allowed to retire from service on 28.02.2001 by the proceedings of the 4th respondent. It has been mentioned in the order of the retirement that a sum of Rs.21,383/- has been left out uncollected by the petitioner during the year 1983 towards water charges while serving in Tiruppur Municipality. In view of this, the petitioner was not given the retirement benefits viz., Superannuation Pension (regular pension), Commutation of Pension, Death-cum-Retirement Gratuity (DCRG).

3. Audit objections have been removed and it has been found that no amount was due and payable by the petitioner. Amount due to the petitioner was directed to be paid to him by an order of the Assistant Director (Addl. In-charge), Directorate of Local Fund Audit, Chennai - 35, dated 03.05.2018, in Ni.Mu.No.14849/M.P.D.(5)/2018.

4. In view of the above, the major portion of the prayer sought for in this Writ Petition by the petitioner has been satisfied. The only issue, which remains for adjudication is as to whether the petitioner is entitled to interest on delayed payment. Rule 45-A of the Tamil Nadu Pension Rules, 1978, deals with the interest on delayed payment of Gratuity, which reads as follows:-

"45-A. Interest on delayed payment of Gratuity:- (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 up to one years; 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 further that no such interest shall be payable:-

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

(b) for the fraction of a month.]”

5. No interest is payable on delayed payment of Gratuity, only if there is departmental or judicial proceedings pending against the retiring Government servant. Further, there is nothing in the Rules, which prohibits grant of interest on delayed payment of pension and other retirement benefits. It is well settled that the pension is not a bounty, but, is deferred wages. Even if the Pension Rules do not provide for grant of interest, Writ Courts are not powerless to grant interest on delayed payment of pension.

6. The Hon'ble Division Bench of this Court, in the case of the Commissioner for Milk Production and Dairy Development and Ors. Vs. S.Venkatachalam and Ors. reported in (2019) 1 MLJ 1, has observed as follows:-

“12. It is well known that pension is not a bounty, but, is deferred wages. The Hon'ble Supreme Court has time and again deprecated the action of the Government in delaying release of pension. It is now settled that even if the pension rules do not provide for grant of interest, Writ Court is not powerless to grant interest on the delay in payment of pension. The Hon'ble Supreme Court in S.K.Dua Vs. State of Haryana & Others {MANU/SC/7048/2008 : 2008 (3) SCC 44}, has observed as under:-

"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. It is to be noted that this judgment was passed, when the High Court refused to grant interest, on the belated payment of retiral benefits, on the ground that there was no provision in the Pension Rules, permitting grant of interest for belated pension. Law laid down by the Hon'ble Supreme Court squarely applies to this case.

14. In fact, a Hon'ble Division Bench of this Court, in Government of Tamil Nadu, represented by the Secretary to Government, Revenue Department, Chennai and another Vs. M.Deivasigamani {2009 (3) MLJ-1}, wherein one of us (Mr. Justice S.Manikumar), is a party, has granted interest, on delayed payment of pension."

7. Rule 45-A provides for interest on delayed payment of Gratuity. The petitioner is therefore, entitled to interest on delayed payment of gratuity at the rate prescribed in Rule 45-A of the Tamil Nadu Pension Rules, 1978. For the remaining amount i.e. pension and other amount, he will be entitled to interest @ 12% per annum from the date of superannuation till the date of payment.

With the above observation and direction, this Writ Petition is allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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2. The Commissioner of Municipal Administration,
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Uthagamandalam, Nilgiris District.
5. The Commissioner,
Corporation of Erode,
Erode.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.28300
+1cc to the Government Pleader, S.R.No.28588

W.P.No.47 of 2013

MP (CO)

RRS (08/05/2019)

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