

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.5815 of 2013

G.Ravindranath

... Petitioner

vs.

1. The Secretary to Government,
Municipal Administration & Water Supply Department
Fort St. George,
Chennai 600 009.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai 600 005.
3. The Director of Local Fund Audit,
Kuralagam, 4th Floor,
Chennai 600 108.
4. The Commissioner,
Karaikudi Municipality,
Karaikudi - 635 002. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the Respondents to award interest @ 18% per annum for the belated payment of commuted value of pension to the petitioner of Rs.1,21,968/- far from 01.08.1999 to 31.12.2012 within a reasonable time.

For Petitioner : Mr.K.Venkatramani,
Senior Counsel
for Mr.M.Muthappan

For Respondents 1 to 3: Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

For 4th Respondent : Mr.R.S.Selvam

O R D E R

Petitioner has come up with the present Writ Petition seeking a direction to the Respondents to award interest @ 18% per annum for the belated payment of commuted value of pension of Rs.1,21,968/- far from 01.08.1999 to 31.12.2012 to him, within a reasonable time.

2. Heard Mr.K.Venkatramani, learned Senior Counsel leading Mr.M.Muthappan, learned counsel for the Petitioner; Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader appearing for Respondents 1 to 3 and Mr.R.S.Selvam, learned counsel appearing for the 4th Respondent.

3. It is not in dispute that the Petitioner was awarded the relief of terminal benefits by G.O.Ms.No.243, Municipal Administration and Water Supply (ME.1) Department, dated 27.09.2012 and the entire amount has been paid to him. The Petitioner had earlier approached this Court in W.P.No.1650 of 2012 and this Court, by an order dated 13.03.2012, directed the Respondents therein to pass orders within a period of 12 weeks from the date of receipt of a copy of the order. Pursuant to the said order of this Court, the 3rd Respondent issued an order regulating the pension and gratuity of the Petitioner after a period of 13 years of his retirement. Now, the only ground taken by the Respondents is that when there is no provision under the Rules, the question of sanction of interest does not arise.

4. In a catena of decisions, the Apex Court has held that in cases of belated payment, interest shall be paid, as terminal benefits due to the employee is not a gratis or bounty in the absence of statutory rules. For better appreciation, relevant portion of the judgment rendered by the Apex Court in the case of Dr.Uma Agarwal vs. State of U.P. reported in (1999) 3 SCC 438, is extracted hereunder:

"... 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."

5. Following the said decision of the Apex Court, this Court, by an order dated 17.12.2008 in Writ Appeal No.886 of 2007 in the case of Government of Tamil Nadu vs. M.Deivasigamani, has held as under:

"7. In view of the judgment of the Supreme Court, it is now well settled that an employee is entitled to interest on belated payment of pension and other retiral benefits, even in the absence of statutory rules/administrative instructions or guidelines and he claims for interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution."

6. On a reading of the above decisions, it is very clear that the Petitioner would be entitled to interest on belated payment of pension and other retiral benefits, even in the absence of Statutory Rules and technicalities would not stand in the way of granting relief to the Petitioner. The contention of the Respondents that Writ Petition is not maintainable as G.O.Ms.No.243, dated 27.09.2012 has not been challenged by the Petitioner, cannot be acceded.

7. Since, terminal benefits were paid to the Petitioner, interest on belated payment of pension and other retiral benefits, has to be paid to the Petitioner from the date the amount became due at the rate of 9% per annum and at the rate of 6% per annum from the date of filing of Writ Petition. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

8. The interest payable to the Petitioner shall be recovered from the Officials, who are responsible for making belated payment of pension, as the Apex Court in the case of Central Co-operative Consumers' Store Ltd. vs. Labour Court, Himachal Pradesh reported in 1993 (3) SCC 214, has ordered recovery of the amount of back wages to the employee from the personal salary of the Officers of the Society, who have been responsible for the endless litigation. For better appreciation, relevant portion of the said judgment is extracted hereunder:

"5. Public money has been wasted due to adamant behaviour not only of the officer who terminated the services but also due to cantankerous attitude adopted by those responsible for pursuing the litigation before one or the other authority. They have literally persecuted her. Despite unequal strength the opposite-party

has managed to survive. We are informed that the opposite-party has been reinstated. This was put forward as bona fide conduct of petitioner to persuade us to modify the order in respect of back wages. Facts speak otherwise. Working life of opposite-party has been lost in this tortious and painful litigation of more than twenty years. That for such thoughtless acts of its officers the petitioner-society has to suffer and pay an amount exceeding three lakhs is indeed pitiable. But considering the agony and suffering of the opposite-party that amount cannot be a proper recompense. We, therefore, dismiss this petition as devoid of any merit and direct the petitioner to comply with the directions of the High Court within the time granted by it. We however leave it open to the society to replenish itself and recover the amount of back wages paid by it to the opposite-party from the personal salary of the officers of the society who have been responsible for this endless litigation including the officer who was responsible for terminating the services of the opposite-party. We may clarify that the permission given shall have nothing to do with the direction to pay the respondent her back wages. Step if any to recover the amount shall be taken only after payment is made to the opposite-party as directed by the High Court."

With the above direction and observation, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (insp cell)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Secretary to Government,
Municipal Administration & Water Supply Department
Fort St. George,
Chennai 600 009.

2. The Commissioner of Municipal Administration,
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3. The Director of Local Fund Audit,
Kuralagam, 4th Floor,
Chennai 600 108.
4. The Commissioner,
Karaikudi Municipality,
Karaikudi - 635 002.

+1cc to Mr.M.Muthappan , Advocate SR.No. 60177

+1cc to Mr.R.Selvam , Advocate SR.No. 59780

+1 cc to Government Pleader Sr.No. 60784

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nmi A.SK(14/08/2019)



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