In the High Court of Judicature at Madras

Dated :: 04.08.2014

Coram ::

The Hon'ble Mr. Justice V. Dhanapalan
and
The Hon'ble Mr. Justice G. Chockalingam

Writ Appeal No: 51 of 2014

The Commissioner
Corporation of Chennai
Chennai – 600 003. ... Appellant

-vs-

1. Mrs. K.E. Kadambari
   Asst. Account Office (Retd.)
   The Corporation of Chennai
   No: 6, 4th Street, Elango Nagar
   Virugambakkam
   Chennai – 600 092.

2. The Secretary to Govt.
   Municipal Administration
   and Water Supply Dept.
   Government of Tamil Nadu
   Secretariat
   Chennai – 600 009. ... Respondents

.. .. ..

Writ appeal under Clause 15 of Letters Patent Appeal against the order dated 27.09.2010 passed by a learned Single Judge of this Court in W.P. No: 12350 of 2009.

For appellant :: Mr. C. Ravichandran

For 1st respondent :: Mr. A.V. Arun

For 2nd respondednt :: Mr. T.N. Rajagopalan
Spl. Govt. Pleader

.. .. ..

J U D G M E N T

(Judgment of the Court was delivered
by V. Dhanapalan, J.)

This writ appeal is directed against the order of a learned single Judge dated 27.09.2009 made in W.P. No: 12350 of 2009 in and by which the learned single Judge allowed the writ petition holding that the writ petitioner is entitled to 18% interest on the principal and seeking to set aside the same.

2. The appellant, Commission of Corporation of Chennai, has assailed the order of the writ Court in fixing the interest at 18% on the delayed payment of pension by contending that it is very high, exorbitant and is against the principles and guidelines issued with regard to fixation of interest. He also raised a ground that granting of interest on the principal amount, in the absence of any statutory rules or administrative guidelines, is unsustainable and as per the bye-laws of the

respondent passing of Account Test for subordinate officers Part I and District Officers manual Examination are pre-requisite qualification test for the post of Assistant and therefore, the promotion given to the Assistant as Section Manager based on the seniority only upto the year 2000 and for those who were promoted on or after the date of resolution, passing of Account Test for subordinate officers Part I and District Officers Manual Examination have been prescribed as a pre-requisite qualification for promotion to the post of Assistant and that the the writ petitioner was allowed to retire from service subject to ratification of Government exempting the petitioner from passing the District Officers Manual Examination and accordingly, the order was issued on the date of her retirement and therefore, there is no delay on the part of the appellant in granting the pensionary benefits and thus, the learned single Judge is not right in holding so and thereby directing the appellant to pay interest at the rate of 18% and hence, this writ appeal.

3. The case of the writ petitioner, who is the respondent herein, before the learned single Judge was that she joined the Corporation of Chennai on 26.05.1967; served for nearly 38 years and retired from service on 31.08.2005. She claims that she was awarded with Indira Vikas Patra of Rs. 500/- for the sincere service rendered by

her to the respondent Corporation. It was her case that she was promoted as Assistant on 04.11.1982; there was no condition stipulated by the Department during that time that she should complete "District Officers Manual examination" and she was also promoted as Manager on 16.02.1996 and Superintendent on 31.07.1997 and she reached the age of superannuation and retired from service on 31.08.2005. The retirement was allowed subject to getting a relaxation from the 1st respondent for not passing the "District Manual Officers' Examination" and therefore, she was granted only provisional pension and her Death Cum Retirement Gratuite (D.C.R.G.) was paid partly. According to the writ petitioner, though she was regularised from 14.01.2003, she was paid pension only in the post of Superintendent. It was her contention that while similarly placed persons were allowed to retire without imposing any such condition, only in her case a condition was imposed thereby curtailing her pensionary benefits. She made repeated representations to the respondents 1 and 2. Since there was no response, she was constrained to file a writ petition in W.P. No: 5765 of 2008 seeking for a direction to disburse the full pension and the retirement benefits along with 18% interest thereon for the delay caused by the department. The said writ petition came be to be disposed of on 27.03.2008 with a direction to the appellant herein to consider petitioner's representation dated 22.10.2007 and dispose of the same within a stipulated time limit. After the receipt of the copy of the said order on 20.10.2008, petitioner was paid with a sum of Rs.3,16,771/-. However, she submitted a representation on 05.01.2009 to the appellant Corporation seeking interest for the delayed payment. Since there was no response, she has filed the writ petition and the order passed thereunder is challenged in this Writ Appeal. The stand of the appellant, as second respondent, before the learned single Judge was that the draft bye-laws for class III and IV of Chennai Corporation, prescribes a pass in Accounts Test for Subordinate Officers Part I and District Officers Manual Examination, as prerequisite qualifications for the post of Assistant. The writ petitioner has not passed the said examination till her retirement. That as per the council's resolution No: 376/2001 dated 20.07.2001, promotions were given to the persons working as Assistants, as Section Managers based on their seniority and the said resolution effected only upto 2000, and for those who were prmoted on or after the date of resolution, a pass in Accounts test for Subordinate Officers Part I and District Officers Manual Examinations are prerequisite qualifications for promotion to the post of Assistant. However, according to the 2nd respondent, the writ petitioner was allowed to retire subject to ratification by the Government exempting the petitioer from passing the District Officers Manual Examination. As per the service rules, she was sanctioned with provisional pension and 75%

of Death Cum Gratuity, on 21.02.2006 and that the post of Assistant Accounts Officer was not confirmed by the Government. Thereafter, the petitioner was confirmed in the post of Assistant Accounts Officer vide G.O. Ms. No: 525 MA & WS Department dated 29.12.2006 and that her services were also regularised in the post of Assistant Accounts Officer with effect from 14.01.2003. Accordingly, the petitioner was paid pay fixation arrears from 15.01.2003 to 31.08.2005 and also the revised pension.

4. It is the further case of the 2nd respondent / appellant before the learned single Judge that the plea of the petitioner that similarly placed persons were all allowed to retire without any such condition is incorrect. Both Mr. Jothi and Mr.Gandhi, referred by the writ petitioner, were allowed to retire and ordered pension in the post of Superintendent only and not in the post of Assistant Accounts Officer and that after confirmation of their posts vide G.O. Ms. No: 525 dated 29.12.2006, their pension was revised and arrears were paid.

5. The learned Single Judge has taken into account all the material information and found that when the writ petitioner was gradually promoted as Assistant Accounts Officer on 14.01.2003, there is no whisper in the averments made in the counter affidavit that the petitioner ought to have passed the District Officers Manual Examination

at the time of promotion as Assistant. However, confirmation order of the writ petitioner in the post of Assistant Accounts Officer has been passed by the Government vide G.O. Ms. No: 525, MA & WS Department dated 29.12.2006 and that the services of the petitier have been regulaised with effect from 14.01.2003. The learned single Judge held that there is delay on the part of the respondents in passing the confirmation order as the proposals for confirmation have been sent only after the petitioner's retirement though she was in service from 2003 onwards. Therefore, considering the materials on record, the learned single Judge has come to the conclusion that there is delay in disbursement of the retirement benefits. After considering several decisions rendered by the Supreme Court, the learned single Judge has arrived at the decision that the writ petitioner is entitlted to get the interest on the belated payment of pension and other retiral benefits, even in the absence of statutory rules / administrative instructions or guidelines and that she can claim interest under Part III of the Constitution, relying on Articles 14, 19 and 21 of the Constitution. Accordingly, the learned single Judge held that the writ petitioner is entitled to 18% interest on the principal at Rs. 3,16,771/-.

6. Mr. C. Ravichandran learned counsel appearing for the appellant mainly contended that there is no statutory Rules or

administrative instruction as to the payment of interest and the percentage of interest awarded by the learned single Judge is very high and exorbitant. According to him, when the appellant has explained the reasons for the delay in sending the proposals for pension, the learned single Judge is not correct in awarding interest at the rate of 18%. Elaborating his arguments, learned counsel for the appellant placed reliance on the decision rendered by the Supreme Court in the case of O.P. Gupta vs. Union of India and others, reported in 1987 (4) S.C.C. 328 and submitted that the Supreme Court had issued directions for payment of interest only at 12 per cent on delayed payment of pension and therefore, the direction of the learned single Judge to pay 18% interest on delayed payment is wholly exorbitant and is unsustainable.

7. On the otherhand, Mr. A.V. Arun, learned counsel appearing for the 1st respondent / writ petitioner would contend that the approach of the Corporation in sending the proposal for confirmation of her post as Assistant Account Officer had been rightly taken note of by the learned single Judge and therefore, the awarding of interest on the ground of admitted delay in disbursal of pension cannot be said to be unsustainable in law. In support of his contention, learned counsel also relied on the decision of the Supreme Court rendered in the case of S.K.Dua vs. State of Haryana and another, reported in 2008 (3) S.C.C.

44.

8. We have heard the respective learned counsel appearing for the parties, considered their submissions and perused the materials available on record.

9. A circumspection of the facts would reveal that the writ petitioner joined the Corporation of Chennai on 26.05.1967; she was promoted as Assistant on 04.11.1982; there was no condition stipulated by the Department during that time that she should complete "District Officers Manual examination" and she was also promoted as Manager on 16.02.1996 and Superintendent on 31.07.1997 and she reached the age of superannuation and retired from service on 31.08.2005, after nearly 38 years of service. The retirement was allowed subject to getting a relaxation from the Government for not passing the "District Manual Officers' Examination". Therefore, she was granted only provisional pension and her Death Cum Retirement Gratuite (D.C.R.G.) was paid partly. According to the writ petitioner, though she was regularised from 14.01.2003, she was paid pension only in the post of Superintendent. It was her contention that while similarly placed persons were allowed to retire without imposing any condition, only in her case a condition was imposed thereby curtailing her pensionary benefits. Seeking similar

benefits as others, writ petitioner made repeated representations to the respondents 1 and 2. Since there was no response, she approached this Court in W.P. No: 5765 of 2008. The said writ petition came be to be disposed of on 27.03.2008 with a direction to the appellant herein to consider petitioner's representation dated 22.10.2007 and dispose of the same within a stipulated time limit. After the receipt of the copy of the said order on 20.10.2008, petitioner was paid with a sum of Rs.3,16,771/-. By her representation dated 05.01.2009 made to the appellant Corporation, the writ petitioner sought interest for the delayed payment. Since there was no response, she has filed the present writ petition. The stand of the Corporation before the learned single Judge was that the draft bye-laws for class III and IV of Chennai Corporation, prescribes a pass in Accounts Test for Subordinate Officers Part I and District Officers Manual Examination, as prerequisite qualifications for the post of Assistant. The writ petitioner has not passed the said examination till her retirement. That as per the council's resolution No: 376/2001 dated 20.07.2001, promotions were given to the persons working as Assistants, as Section Managers based on their seniority and the said resolution effected only upto 2000, and for those who were promoted on or after the date of resolution, a pass in Accounts test for Subordinate Officers Part I and District Officers Manual Examinations are prerequisite qualifications. Therefore, when the writ petitioner attained the age of superannuation, she was allowed to retire subject to ratification by the Government exempting her from passing the District Officers Manual Examination. Pending such an order, she was sanctioned with provisional pension and 75% of Death Cum Gratuity, on 21.02.2006. Thereafter, the petitioner was confirmed in the post of Assistant Accounts Officer vide G.O. Ms. No: 525 MA & WS Department dated 29.12.2006. Following the confirmation, petitioner's services were also regularised in the post of Assistant Accounts Officer with effect from 14.01.2003 and she was paid pay fixation arrears from 15.01.2003 to 31.08.2005 and also the revised pension.

10. It is seen that, the learned single Judge, has considered the materials on record and came to the conclusion that there was in fact delay on the part of the respondents in sending the proposal for confirmation, only after the petitioner reached the age of superannuation in the year 2005, though petitioner was in service from 2003 onwards and therefore, the petitioner is entitled for interest at the rate of 18%.

11. Law is well settled that if a Government servant retires from service, the retirement benefits have to be extended to them within a reasonable time and such benefits cannot be delayed for any

reason. In case, there is delay on the part of the authorities, then the Government servant is entitled to interest on such benefits. However, there are statutory rules and administrative instructions with regard to the payment of interest. In the absence of any statutory rule or administrative instructions with regard to the payment of interest, the ratio laid down by this Court or the Supreme Court will prevail.

12. In this regard it is useful to refer to the decision of the Supreme Court rendered in S.K. Dua vs. State of Haryana and another, reported in 2008 (3) S.C.C. 44. It was held that,

> " 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 adminstrative instructions, guidelines or norms precribed 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 limini even without issueing notice to the respondents."

The ratio laid down by the Supreme Court in the aforesaid decision would clearly indicate that retirement benefits are not in the nature of bounty and it is the right of an employee to claim such benefits.

13. In the light of the aforesaid legal position, we are of the considered opinion that the 1st respondent / writ petitioner is entitled to have interest on the delayed payment of her retirement benefits from the date of confirmation till the date of the actual payment. However, we are not satisfied with the approach of the Court in awarding interest to the extent of 18%. The normal practise of awarding interest on the delayed payments would go upto 12%, in the absence of any particular statutory rule or administrative instructions to that effect. Even in the decision rendered in O.P. Gupta vs. Union of India and others, reported in 1987 (4) S.C.C. 328, cited supra, the Supreme Court has awarded interest at the rate of 12% on the delayed payment of pension. In that

case the Supreme Court held that,

> " 24. Normally, this Court, as a settled practice, has been making direction for payment of interest at 12 per cent on delayed payment of pension. There is no reason for us to depart from that practice in the facts of the present case."

Therefore, we are of the considered view that the interest awarded by the writ Court at 18% is not well founded and is unreasonable. Accordingly, we reduce the rate of interest to 12% from 18%. The writ appeal stands partly allowed with regard to the reduction in the rate of interest from 18% to 12%.

14. It is informed that pursuant to the orders passed by this Court in the writ petition, the appellant Corporation had deposited the amount to the credit of this Court. The 1st respondent / writ petitioner is hereby permitted to withdraw such amount due to her as per the modified rate of interest. The appellant Corporation is also permitted to withdraw the remaining amount.

Index : Yes (V.D.P.J.) (G.C.J.)
Website : Yes 04..08..2014
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To

1. The Secretary to Govt.
   Municipal Administration
   and Water Supply Dept.
   Government of Tamil Nadu
   Secretariat
   Chennai – 600 009.

V. Dhanapalan, J.
and
G. Chockalingam, J.

W.A. No: 51 of 2011

04.08.2014