

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2019

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.32462 of 2014

K.Ganesan

.. Petitioner

Vs.

1.The Secretary to the Government,
Government of Tamil Nadu,
Handlooms, Handicrafts,
Textiles and Khadi (E2) Department,
Fort St. George, Chennai - 600 009.

2.Director of Handlooms and textiles,
Department of Handlooms and Textiles,
Kuralagam, II Floor,
Chennai - 600 108.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue WRIT OF CERTIORARIFIED MANDAMUS calling for the records relating to Government Letter No.7890/E2/2011-9, dated 13.03.2014, passed by the first respondent as communicated vide R.C.No.11993/2011/A1 dated 10.04.2014 of the second respondent and to quash the same and to direct the first respondent to pay interest at 18% (Compounded annually) of Gratuity (D.C.R.G.), Family Benefit Fund (F.B.F.), arrears of pay for delayed payment w.e.f. 01.05.1996 till date of actual payment to the petitioner with costs.

For Petitioner: Ms.Y.Kavitha

For R1 & R2 : Mr.C.Karthikeyan,
Additional Government Pleader

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O R D E R

The petitioner has filed the Writ Petition praying to issue a CERTIORARIFIED MANDAMUS calling for the records relating to Government Letter No.7890/E2/2011-9, dated 13.03.2014, passed by the first respondent as communicated vide R.C.No.11993/2011/A1 dated 10.04.2014 of the second respondent and to quash the same and to direct the first respondent to pay interest at 18% (Compounded annually) of Gratuity (D.C.R.G.), Family Benefit Fund (F.B.F.), arrears of pay for delayed payment w.e.f.

01.05.1996 till date of actual payment to the petitioner with costs.

2. According to the learned counsel for the petitioner, the petitioner served in the Co-operative Department and he was promoted as Handloom Officer and was holding the additional charge of four Weavers Co-operative Societies, viz., (i) Engoor Weavers Co-operative Society, (ii) Engoor Amman Weavers Co-operative Society, (iii) Guruvareddiar Weavers Co-operative Society and (iv) Chintamani Weavers Co-operative Society. In the year 1991, the audit of the Engoor Weavers Co-operative Society was conducted and the Auditor submitted a report quoting some serious irregularities were made by the Manager. The petitioner was not aware of the said irregularities found in the audit report and he was suspended from service on 03.04.1992, on the ground that grave charges were pending against the petitioner. Challenging the suspension order, the petitioner preferred a O.A.No.2814 of 1992 before the State Administrative Tribunal and the said Tribunal passed an order dated 12.08.1992, to set aside the order of suspension and directed the respondents to reinstate the petitioner in service.

3. Pursuant to the order of Tribunal, the petitioner was reinstated in service. Subsequently on 02.03.1993, the Assistant Director Handlooms and Textiles framed charges against the petitioner on the basis of the Enquiry Officer's report. The enquiry was conducted on 05.05.1994 and the report was submitted to the Government on 09.06.1994. The petitioner submitted his detailed representation dated 30.08.1994 to the enquiry report. An investigation was also conducted by the vigilance and Anti Corruption Department during the year 1996. Meanwhile, the petitioner was not permitted to retire from service on reaching the age of superannuation on 30.04.1996 and he was retained in service until the enquiry into the charges of criminal misconduct pending against him is concluded. The criminal proceedings were initiated against the petitioner before the Chief Judicial Magistrate, Erode being Special C.C.Nos.2 of 1999 and 3 of 1999 for the allegation of conspiracy, falsification of documents, breach of trust and forgery. The aforesaid criminal case was ended in acquittal on 31.12.2003 and the petitioner was relieved from all the charges, but the respondents issued a charge memo against the petitioner on 09.06.2005 under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules for the alleged offences during the petitioner's tenure as Special Officer of Engoor Society between 31.12.1989 to 18.12.1990.

4. The petitioner filed Writ Petitions in W.P.Nos.39894 of 2005 and 28711 of 2006 and M.P.No.1 of 2006 before this Court challenging the said charge memo dated 09.06.2005 and G.O.2(D) No.4, Handlooms, Textiles and Khadi (E2) dated 30.04.1996

respectively. By order dated 27.01.2009, this Court allowed the writ petition by quashing the charge memo issued against the petitioner and further directed the respondents to issue consequential order permitting the petitioner to retire from service w.e.f. 30.04.1996 and to settle all his terminal benefits within a period of four months from the date of receipt of a copy of that order. The respondents have paid the Gratuity (DCRG) for a sum of Rs.1,20,450/- (Rupees one lakh twenty thousand four hundred and fifty only) on 11.03.2010, but payment of interest on delayed payment of the retiral benefits, was denied by the respondents. Hence, he made a representation dated 20.03.2010, by referring the G.O.Ms.No. 122, Finance (Pension) Department, dated 20.02.1995, stating that the interest has to be paid at the rate of 12% per annum compounded annually, if the retirement gratuity is not paid within three months from the date of retirement.

5. Several representation was also sent to the higher authorities for the payment of compound interest at the rate of 12% amounting to Rs.4,59,216/- (Rupees four lakh fifty nine thousand two hundred and sixteen only). However, the second respondent passed an order dated 10.04.2014, rejecting the request of the petitioner for grant of interest, on the ground that there is no delay in payment of Death cum Retirement Gratuity. Therefore, the writ petitioner filed this present writ petition before this Court as per the Government Orders and as per the Rule 45-A of the Tamil Nadu Pension Rules 1978, the petitioner is entitled for 12% of interest compounded annually.

6. The learned Additional Government Pleader would submit that the impugned order passed by the respondents is valid in law as the same has been passed after considering the order passed by this Court in the above writ petitions. The said Gratuity amount has been settled to the petitioner and therefore, there is no delay in payment of the Gratuity (D.C.R.G.). Hence, the aforesaid writ petition is liable to be rejected.

7. The learned counsel appearing for the petitioner relied upon the un-reported Judgment of the Hon'ble Supreme Court of India in the case of D.D. Twarei (D) Thr. Lrs. Vs. Uttar Haryana Bijli Vitran Nigam Ltd., and others in Civil Appeal No.7113 of 2014 of SLP (C) No.25015 of 2011 dated 01.08.2014, wherein the Hon'ble Supreme Court of India has held in paragraphs 4 to 6 as follows:

"4. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned Single Judge after adverting to the relevant facts and the legal position has given a direction to the

employer-respondent to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the Judgment referred to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.

5. It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972. Having regard to the facts and circumstances of the case, we do not propose to do that in the case in hand.

6. For the reasons stated above, we award interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of entitlement till the date of the actual payment. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date of amount falls due to the deceased employee. With the above direction, this appeal is allowed."

8. It is also useful to extract the relevant paragraph No.3 from G.O.Ms.No.122, Finance (Pension) Department, dated 20.02.1995 as follows:

"3. The Government have carefully examined the question of revision of rate of interest for the delayed payment of Death-cum-Retirement Gratuity and have decided to adopt the Government of India orders referred to in para 2 above in respect of State Government employees. They accordingly direct that when payment of Death-cum-

Retirement Gratuity has been delayed the rate of interest shall be paid at the rate of 12% per annum (compounded annually)."

9.The petitioner has prayed for the interest payable from the date of superannuation till the date of settlement of the Gratuity amount and the petitioner is entitled for the relief as prayed for by the petitioner.

10.In the light of the aforesaid Judgment as well as the G.O.Ms.No.122, Finance (Pension) Department, dated 20.02.1995, this Court has no hesitation to quash the order dated 10.04.2014 passed by the second respondent.

11.In the result the impugned order is quashed and the first respondent is directed to pay the interest at the rate of 9% per annum on the delayed payment of the Gratuity amount compounded annually from the date of entitlement till the date of the actual payment within a period of three months from the date of receipt of a copy of this order, failing which the same shall carry interest at the rate of 18% per annum will be paid to the petitioner till the realization of the petitioner.

12.Accordingly, the writ petition is disposed of with the above direction. No costs.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.The Secretary to the Government,
Government of Tamil Nadu,
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Fort St. George, Chennai - 600 009.

2.Director of Handlooms and textiles,
Department of Handlooms and Textiles,
Kuralagam, II Floor,
Chennai - 600 108.

+1 CC to M/s.Giridhar & Sai, Advocate sr 14739.

+1 CC to Govt. Pleader sr 15114.

W.P. No.32462 of 2014

AD(CO)
SP(04/04/2019)