

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27/9/2019

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice D.Krishnakumar

Writ Appeal No.3257 of 2019

T.T.Palanisamy ...Appellant

Vs

1. The Government of Tamil Nadu
rep. By Secretary to Government
Home (Pol.2) Department
Secretariat
Chennai 600 009.
2. The Director General of Police
Chennai 600 004. Respondents

Prayer: Appeal filed under Clause XV of Letters Patent to set aside the order passed in W.P.No.4601 of 2013, dated 24/10/2018.

WP.No.4601 of 2013:Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to implement the orders passed by the Honourable Tamilnadu Administrative Tribunal passed order in OA.No.1314 of 2004 dated on 19.04.2004 and the order of this Honourable Court in WP.No.3883 of 2006 on 13.02.2006.

सत्यमेव जयते

For appellant ... Msr.L.Santhosh Kumar

For respondents ... Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader

J U D G M E N T
(Judgment of the Court was made by S.Manikumar,J)

Appellant is a retired Deputy Superintendent of Police. At the time of filing of W.P.No.4601 of 2013, he was aged about 70 years, for a mandamus, directing the respondents to implement the orders passed by the Hon'ble Tamil Nadu Administrative Tribunal, passed order in O.A.No.1314 of 2004, dated 19/4/2004, and the order of this Court, in W.P.No.3883 of 2006, dated 13/2/2006.

2. Grievance of the petitioner is that the Tamil Nadu Administrative Tribunal, in O.A.No.1314 of 2004, dated 19/4/2004, held that the appellant shall be deemed to have been compulsorily retired, with effect from 31/1/2002, and that he was imposed with a punishment of cut in pension, to the extent of 15%, for a period of six months.

3. Before the writ Court, appellant has contended that order made in Tribunal was not implemented. Hence, he has filed W.P.No.3883 of 2006, for a direction to the Secretary to Government, Government of Tamil Nadu, Home (Pol.2) Department, Secretariat, Chennai, first respondent therein, to implement the order of the Tamil Nadu Administrative Tribunal, dated 19/4/2004, made in O.A.No.1314 of 2004, within a reasonable time.

4. Vide, order, dated 13/2/2006, a learned Single Judge of this Court, directed the Secretary to Government, Government of Tamil Nadu, Home (Pol.2) Department, Secretariat, Chennai, first respondent therein, to consider the representations of the petitioner, dated 15/6/2004 and 27/9/2005 and the lawyer's notice, dated 29/11/2005, respectively, and pass orders on merits and in accordance with law, within a period of three months, from the date of receipt of a copy of the order, made in W.P.No.3883 of 2006.

5. Contending inter alia that both the above said orders have not been implemented, appellant has filed W.P.No.4601 of 2013, for a mandamus, directing the Government of Tamil Nadu, Home (Pol.2) Department, Secretariat, Chennai and the Director General of Police, Chennai, respondents 1 and 2 respectively, to implement the orders passed by the Tamil Nadu Administrative Tribunal, in O.A.No.1314 of 2004, on 19/4/2004 and the order of this Court, in W.P.No.3883 of 2006, on 13/2/2006.

6. By observing that for implementing the orders of this Court and orders of the Administrative Tribunal, writ petition

is not maintainable and that the appellant had chosen to file W.P.No.4601 of 2003, after a lapse of six years, from the date of order made in W.P.No.3883 of 2006, dated 13/2/2006, writ Court, rejected the writ petition, on the ground of laches.

7. Being aggrieved, instant writ appeal is filed on the following grounds:-

(i). Writ Court, dismissed the writ petition No.4601 of 2013, dated 24/10/2018, without taking into consideration that it was the respondents, who had failed to implement the order of the Tamil Nadu Administrative Tribunal, in O.A.No.1314 of 2004, dated 19/4/2004.

(ii). Writ Court, dismissed the writ petition No.4601 of 2013, dated 24/10/2018, without taking into consideration that the order of the Tamil Nadu Administrative Tribunal, in O.A.No.1314 of 2004, dated 19/4/2004 had become final as the same was not challenged.

(iii). Writ Court, dismissed the writ petition, without taking into consideration that the respondents had even failed to follow the direction of this Court in W.P.No.3883 of 2006, dated 13/2/2006.

(iv). Writ Court, dismissed the writ petition No.4601 of 2013, dated 24/10/2018, without considering the fact that the appellant is a senior citizen.

8. Heard Mr.L.Santhosh Kumar, learned counsel for the appellant and Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader for the respondents.

9. In Union of India and Others Vs.Tarsem Singh {2008 (8) SCC - 648}, the Hon'ble Supreme Court, by explaining as to what is a continuous wrong and if such a wrong is assailed before the Court of law, delay whether laches can be put against the Government Servant/employee, at paragraph No.5, held as follows:-

5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in

respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

10. True that for implementation of an order made by the Administrative Tribunal or the writ Court, as the case may be, a further or fresh writ petition may not be maintainable, but the appropriate remedy would be to file a contempt petition. However, in the light of Tarseem Singh's case Hon'ble Supreme Court held that applicability of delay and laches cannot be raised in the matter of entitlement of pension or pay, as the case may be and we are of the view that Writ Court ought to have entertained the writ petition and addressed the grievance of the appellant.

11. Needless to state that remedy under Article 226 of the Constitution of India is equitable and Courts have also held where the substantial justice delay and laches should not be put against a litigant retirement and more so, in a case, where the litigant claims that his pensionary and other benefits have not been paid, despite the orders of the Tamil Nadu Administrative Tribunal, in O.A.No.1314 of 2004, dated 19/4/2004 and the further directions of this Court.

12. Reference can also be made to the power of the Court for moulding the relief.

13. Keeping in mind the above judgments of the Hon'ble Supreme Court, we now revert to the facts of the case. Vide, Government order made in G.O.(2D) No.160, Home, dated 19/5/2003, appellant was compulsorily retired for the charges proved against him. Appellant had challenged the order, made in G.O. (2D) No.160, Home (Pol.2), Department, dated 19/5/2003, imposing

the punishment of compulsory retirement, for the proved misconduct, with effect from 4/6/2003, and 15% cut in pension, as per Rule 39 (1) of the Tamil Nadu Pension Rules, 1978. Though the orders were challenged in O.A.No.1314 of 2004, advertent to the submissions, the Tamil Nadu Administrative Tribunal, vide, order, dated 19/4/2004, at paragraph No.12, ordered as hereunder:-

"In the result, impugned Government Orders are modified and applicant shall be deemed to have been compulsorily retired with effect from 31/1/2002 and he shall be imposed with punishment of cut in pension to the extent of 15%, for a period of six months. After this period, the applicant is entitled to normal pension to which he is eligible. The application is ordered in these terms."

14. Appellant is stated to have sent a letter, dated 15/6/2004, to the Secretary to Government, Home (Pol.2) Department, Chennai, to implement the said order. As there was no response, appellant has filed W.P.No.3883 of 2006, to implement the order of the Tribunal, which came to be disposed of, on 13/2/2006, as hereunder:-

"Considering the limited prayer sought for by the petitioner, there will be a direction to the first respondent to consider the representations of the petitioner dated 15/6/2004 and 27/9/2005 and the lawyer's notice, dated 29/11/2005 and pass orders on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order, if there is no legal impediment."

15. After six years, appellant has also made a representation, dated 19/8/2007, to the Principal Secretary to the Government of Tamil Nadu, Home Department (Police - II), Secretariat, Chennai, to implement the orders. Responding to the request under Right to Information Act, 2005, vide, reply, dated 5/12/2011, the Public Information Officer/Under Secretary to Government, has stated that implementation of the order of the Tamil Nadu Administrative Tribunal, dated 19/4/2004, in O.A.No.1314 of 2004 filed by the appellant is under consideration of the Government in consultation with the advisory departments. Thereafter, appellant has filed W.P.No.4601 of 2013, for the relief, as stated supra. Writ Court has dismissed the petition.

16. When the present appeal up for admission, in the light of the decision of the Hon'ble Supreme Court, in Tarsem Singh's case, prima facie, we were of the view that dismissal of W.P.No.4601 of 2013, on the grounds of delay and laches, in particular, in the matter pertaining to pension and disbursement of retirement benefits, ought not to have been made. Though remedy under the Contempt of Courts Act was available to the appellant, he should have approached, within a reasonable time. Nevertheless, as the Court has got the power to mould the relief, we directed Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader, to get instructions, as to whether the order of the Tribunal, made in O.A.No.1314 of 2004, dated 19/4/2004, and the further direction of this Court were implemented and as to whether DCRG benefits have been disbursed.

17. On instructions from the office of the Superintendent of Police, Namakkal District, learned Special Government Pleader submitted that appellant, former Deputy Superintendent of Police, attained the age of superannuation, on 31/1/2012. He was placed under suspension, on 31/1/2002 and was not allowed to retire from service, on superannuation, i.e., on 31/1/2002. Subsequently he was compulsorily retired, on 19/5/2003.

18. Learned Special Government Pleader further submitted that last drawn pay of the appellant was Rs.5,100/-. By virtue of the order, made in O.A.No.1314 of 2004, dated 19/4/2004, appellant shall be deemed to have been compulsorily retired, with effect from 31/1/2002, and that imposed with a penalty of cut in pension, for a period of six months.

19. According to the learned Special Government Pleader, commutation value, of Rs.1,28,663/- has been paid to the appellant. Leave salary of Rs.1,56,980/- has been paid on 12/10/2004. DCRG of Rs.2,44,035/- has been paid, on 19/1/2004. GPF of Rs.15,68/- and SPF of Rs.2,960/- and Rs.7,336/-, were paid to the appellant, in December 2004.

20. Learned Special Government Pleader further submitted that though punishment of 15% cut in pension was ordered only for six months, inadvertently, the department has not paid full pension after six months period, as ordered by the Tamil Nadu Administrative Tribunal, but continued to pay pension with 15% cut. According to the learned Special Government Pleader, a tentative calculation of pension amount due and payable to the appellant as on date would be around Rs.5,57,666/-. Cut in pension has been made from 19/5/2003 onwards and that the appellant has been paid a sum of Rs.4,335/-, being 85% pension.

21. Appellant is stated to have been paid Rs.5,100/-, from 1/2/2002 to 18/5/2003. As per the order of the Hon'ble Tribunal, appellant ought to have been paid pension with 15% cut from 31/1/2002 for 6 months, and after the said period, full pension. Therefore, accordingly commutation value of pension has to be worked out.

22. Government have issued various Orders, setting out the revised rate of interest on delayed payment of death-cum-retirement benefits. O.A.No.1314 of 2004, has been disposed of 19.04.2004 and thereafter, leave salary, GPF, commuted value of pension, seemed to have been disbursed in December 2004. In W.A.(MD) No.716 of 2015, dated 24/7/2015, (The Secretary, Hindu Religious & Charitable Endowment Department, Government of Tamil Nadu and another Vs. 1. P. Sankaranarayanan and another), a Hon'ble division Bench of this Court, where, one of us is a party, (The Hon'ble Mr.Justice S.Manikumar), have considered the G.Os., which are reproduced

"15.Having decided to disburse the Death cum Retirement Gratuity, it should not been delayed. Rule 45-A(1) would be applicable, in a case where the Government have decided to withhold the retiral benefits, on account of any revenue loss to the Government. Even in such cases, recovery could be made from pension. Such a situation does not arise in this case, as the department itself has submitted that there was no revenue loss. Dismissal from service on account of disciplinary proceedings would entail forfeiture of all benefits. But in the case on hand, the department itself has decided to disburse Death cum Retirement Gratuity, indicating that there will not be any order of dismissal from service, even if the disciplinary proceedings reaches finality. Even if the disciplinary proceedings goes adverse to the respondent, penalty can be made on pension.

16.Thus in the light of the judgment in Y.Raja's case (cited supra) and the decision of the department to disburse Death cum Retirement Gratuity, the same ought not to have been delayed and in such circumstances, G.O.Ms.No.122, Finance (Pension) Department, dated 20.02.1995, would lend support to the case of the respondent.

17. In the light of the above discussion, we are not inclined to interfere with the impugned order in this appeal. Accordingly, the writ appeal is dismissed."

23. In yet another decision, W.A.No.1272 of 2017, dated 20/10/2017, another Hon'ble Bench of this Court, where one of us is a party (The Hon'ble Mr. Justice S. Manikumar), after taking note of a decision of the Hon'ble Supreme Court, in Dr. Uma Agrawal Vs. State of Uttar Pradesh {1999 (3) SCC - 438} and S.K. Dua Vs. State of Haryana, {2008 (3) SCC - 44}, the other decisions held as follows:

"18. Payment of pension is no act of grace or bounty on the part of anyone. That is a right earned by the Government servant, in recognition of his past services. That is the reason why payment of pension to the Government servants has come to be recognized as a event of deferred payment for the quality of services rendered by such men. After all, the State Government promises certain services to its citizens and secures delivery of such services to the citizens by employing Government servants. Therefore, in recognition of such services rendered to the citizens, the State undertakes to pay monthly pension to such retired Government servants, also as a measure of social security. Any delay in settling such terminal benefits has to be viewed seriously.

19. The maximum period of six months is considered as a reasonable outer limit for sanction of pension and other terminal benefits. At any rate settling the pensionary benefits beyond a period of one year can never be appreciated and it must necessarily result in some kind of compensation. Since the State Government has taken a Policy decision to award interest on delayed settlement of Gratuity- which in fact is in consonance with the provisions contained in Section 7(3-A) of Payment of Gratuity Act, 1978- but at the same time, the State Government, as a Policy has not authorized any payment of interest on delayed pension. In the absence of any Policy decision on the part of the State Government, we are not denuded to come to the rescue of a hapless and helpless retired servant of the State. We can properly mould the relief and award compensatory cost which are capable of being recovered from the identified/ identifiable persons

responsible for the malady. The Government servants are accountable for both what they do and don't do."

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 deductible 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.

24. In the light of the decisions of the Hon'ble Supreme Court, Division Bench judgments of this Court and Government Orders issued, appellant 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 that he can make his claim for interest, under Part III of the Constitution, based on Articles 14, 19 and 21 of the Constitution.

25. In the light of the above discussion and decisions, Writ Appeal is allowed and the order made in W.P.No.4601 of 2013, dated 24/10/2018, is set aside. There shall be a direction to the Secretary to Government, Home (Pol.2) Department, Chennai and the Director General of Police, Chennai, to calculate the actual arrears of pension due and payable to the appellant with Dearness Allowance. Respondents are also directed to calculate the actual entitlement of the appellant to the commuted value of pension and DCRG and pay interest on the delayed payment of the differential commuted value of pension and disburse the same, as per the Government Orders, stated supra. While doing so, respondents are also directed to take into consideration the payment of pension, i.e., 100% between 1/2/2002 and 18/5/2003 (Rs.5,100, representing 100%). Having regard to the age of the appellant, now stated to be 77 years, the said exercise be completed within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1.The Secretary
The Government of Tamil nadu
Home(Pol.2) Department,
Secretariat, Chennai-9

2.The Director General of Police
Chennai-4

+1 cc to M/s.L.Santhosh kumar Advocate sr83032
+1 cc to the government pleader sr83664

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