



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.17953 of 2013

R.Krishnasamy

.. Petitioner

Vs.

1.The Principal Secretary to
Government Rural Development
and Panchayat Raj Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Commissioner of Rural Development
and Panchayat Raj, Panagal Building,
Saidapet, Chennai - 600 015.

3.The District Treasury Officer,
Virudhunagar,
Virudhunagar District - 636 705.

4.The Sub Treasury Officer,
Sivakasi,
Virudhunagar District.

.. Respondents

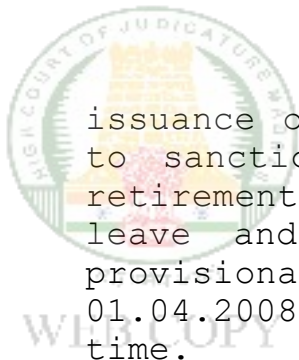
PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents herein to sanction 18% composite interest claimed by the petitioner for the belated payment of retirement benefits such as GPF final closure, surrender of earned leave and leave on private affairs, special PF, payment of provisional pension, pension arrear, commutation and DCRG from 01.04.2008 to till the date of actual payment, within a stipulated time.

For petitioner : Mr.Veera Kathiravan,
Senior Counsel for
M/s.Veera Associates

For respondents : Mr.S.Dhayalan,
Government Advocate

ORDER

<https://hcservices.ecourts.gov.in/hcservices/> writ petition has been filed by the petitioner for



issuance of a Writ of Mandamus, to direct the respondents herein to sanction 18% composite interest for the belated payment of retirement benefits such as GPF final closure, surrender of earned leave and leave on private affairs, special PF, payment of provisional pension, pension arrear, commutation and DCRG from 01.04.2008 to till the date of actual payment, within a stipulated time.

2. According to the petitioner, while he was working as Joint Director of Rural Development and Panchayat Raj Department, he was issued charge memos at the fag end of his retirement and subsequently, he retired from service on attaining the age of superannuation on 31.03.2008 without prejudice to the disciplinary proceedings initiated against him. The charge memos were quashed by this Court in W.P.(MD).Nos.5108 and 5109 of 2008, by order dated 12.03.2010, with a direction to settle the retirement benefits within a period of 12 weeks. The appeal filed by the respondents were also dismissed. Subsequently, in the year 2012, the first respondent dropped all the charges issued against the petitioner. The 2nd respondent forwarded the pension proposal on 04.12.2012 to the Accountant General. Citing the delay of 5 years in forwarding the proposal, the Accountant General calculated the age of the petitioner as 63 instead 58 and therefore, the petitioner has filed separate writ petition in W.P. (MD).No.16947 of 2013 and the same is still pending. As the charge memos were quashed, the petitioner is entitled to 18% interest for the delayed payment of retirement benefits. Though the petitioner has sent a representation to the respondents on 13.07.2013 in this regard, the same is still pending without passing any orders. Hence, the petitioner has come up with this writ petition.

3. The learned senior counsel appearing for the petitioner submitted that as the petitioner is exonerated from the charges, he is deemed to have been in service continuously not facing any delinquency. He would further submit that as per Section 45 of the Tamil Nadu Pension Rules, the petitioner is entitled to 12% interest per annum for the belated payment of DCRG and for the belated payment of other retirement benefits, the petitioner is entitled to 18% interest per annum. In support of his contention, he relied upon a decision of this Court in **P.V.Mahadevan Vs. The Secretary to Government, Housing and Urban Development Department, Chennai and another**, reported in 2011 (2) CWC 401.

4. The learned Government Advocate appearing for the respondents submitted that the petitioner has already been given the retirement benefits and in view of the pendency of the disciplinary proceedings, the retirement benefits have not been given immediately after his retirement and therefore, the



petitioner is not entitled to interest for the belated payment. Thus, he prayed to dismiss this writ petition.

5. Heard the learned counsel for both sides and perused the records carefully.

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6. When the similar issue arises for consideration, a learned Single Judge of this Court in the case of P.V.Mahadevan, cited supra, after referring to the decisions of the Hon'ble Apex Court as well as this Court, has held as follows:

"8. Before proceeding to consider the core question involved in this matter to the effect that whether the petitioner is entitled to seek the relief of interest for the delayed payment of retiral benefits, it is relevant to state the status of the petitioner after the charge memo issued against him was quashed by the Hon'ble Apex Court.

9. It is well-settled that once a disciplinary proceedings or charge memo was quashed by a Court of law, the said delinquent officer is deemed to have been in his original position. At this juncture, it is relevant to refer the Division Bench decision of this Court in The Secretary, Vallalar Gurukulam Higher Secondary School Vs. District Educational Officer, Cuddalore reported in 2005 (4) CTC 7, wherein, the Division Bench has held as hereunder :

"6. Once a person is acquitted in a criminal case, it has to be deemed that he never committed that offence. This is because every judgment operates retrospectively unless expressly made prospectively, unlike a legislation which normally operates prospectively unlike expressly made retrospectively."

10. The Hon'ble Apex Court in Devendra Pratap Narain Rai Sharma Vs. State of U.P. reported in AIR 1962 SC 1334 has held as hereunder :

"11. But in this case the order of dismissal was declared invalid in a civil suit. The effect of the decree of the civil suit was that the appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. The effect of the adjudication of the civil courts is to declare that the appellant had been wrongfully prevented



from attending to his duties as a public servant."

11. Therefore, the principles laid down by the Division Bench of this Court and the Hon'ble Apex Court make it crystal clear that once the charge memo issued against a delinquent officer is quashed or once the dismissal order passed against the public servant was declared invalid in a civil proceedings, the delinquent officer is deemed to have been in service continuously not facing any delinquency. The said principle is squarely applicable to the facts of the instant case as in this case also the Hon'ble Apex Court has quashed the charge memo issued against the petitioner and as such, he is deemed to have been in service without any departmental proceedings on the date of his retirement, i.e., on 28.02.2002. In view of the above said reasons, this Court has no hesitation to hold that the petitioner cannot be deprived or denied his right to claim interest for the delayed payment of retiral benefits on the ground of pendency of disciplinary proceedings pending against him earlier.

12. Now coming to the main question involved in the matter, viz., the entitlement of the petitioner to seek the relief of interest for the delayed payment of retiral benefits, it is relevant to refer the impugned order. A perusal of the impugned order issued by the second respondent dated 22.09.2006 reveals that the relief sought for by the petitioner was denied mainly on the ground of pendency of the disciplinary proceedings against the petitioner and on the basis of the Government Order in G.O.Ms.No.527 to the effect that no interest shall be payable in cases where the delay in the payment of Death-cum-Retirement Gratuity is due to the institution of departmental or judicial proceedings. It is needless to state that such a Government Order cannot have a statutory force.

13. On the other hand, there is a specific rule available in the Tamil Nadu Pension Rules, 1978 as per Rule 45(1-A) of the Rules which reads hereunder :

"45-A. Interest on delayed payment of gratuity (1-A). The period beyond which such interest is



payable shall be as follows -

(i) in the case of a Government servant retired otherwise on superannuation and where the Death-cum-Retirement Gratuity is withheld on account of disciplinary proceeding pending against him. -

(a) three months from the date of retirement where the Government servant is exonerated of all charges and where the Death-cum-Retirement Gratuity is paid on the conclusion of disciplinary proceedings ;"

A reading of the above said provision makes it abundantly clear that a Government servant is entitled to seek the relief of interest in respect of the delayed payment of Death-cum-Retirement Gratuity three months from the date of retirement.

14. The learned Standing Counsel for the second respondent placed reliance on the second proviso to Rule 45-A(1) which reads hereunder :

"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 ; ..."

A reading of the above said proviso makes it abundantly clear that no interest shall be payable only where the institution of departmental or judicial proceeding against the retiring Government servant is pending. Therefore, the said provision is applicable to the government servant against whom the disciplinary proceedings is pending at the time of retirement.

15. As far as the case of the petitioner is concerned, admittedly he is standing on a different footing. As already pointed out, once the charge memo issued against him has been quashed by the Honble Apex Court, the petitioner is continuously deemed to have been in service even at the time of retirement on 28.02.2002. Therefore, I am unable to countenance with the above said contention of the learned counsel for the second respondent.



that the above said statutory rules are available under the Tamil Nadu Pension Rules as far as Death-cum-Retirement Gratuity is concerned. It is needless to state that interest claimed by the petitioner in respect of other benefits, viz., Commutation of Pension, Encashment of Earned Leave, Provident Fund, Special Provident Fund, Fifth Pay Commission arrears, Pension Arrears, Incremental arrears, etc., has to be considered by the authorities concerned in the light of the principle laid down by the Hon'ble Apex Court in a catena of decisions.

17. At this juncture, it is relevant to refer the decision of the Honble Apex Court in **S.K.Dua Vs. State of Haryana reported in 2008 (3) SCC 44.** The Honble Apex Court in the said decision has held as hereunder :

"14. In the, 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 circumstances 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."

18. The above said principle laid down by the Honble Apex Court is also followed by a Division Bench of this Court in Government of Tamil Nadu Vs. M.Deivasigamani reported in 2009 (3) M.L.J. 1, wherein, the Division Bench has held as hereunder :

"7.... An employee is entitled to claim interest on belated payment of pension and other retrial benefits, even in the absence of statutory rules/administrative instructions or guidelines and he can make his claim for interest, under Part III of the Constitution of India relying on Articles 14, 19 and 21 of the Constitution of India



19. In view of the principles laid down by the Honble Apex Court and the Division Bench of this Court, this Court has no hesitation to hold that the petitioner is entitled to seek the relief of interest.

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20. Let me now consider the rate of interest for which, the petitioner is entitled to seek for the belated disbursement of the retrial benefits. The petitioner has claimed interest of 18% p.a., for such delay caused on the part of the second respondent herein. It is pertinent to note that even in respect of one of the retirement benefits, viz., 'encashment of leave on private affairs', the petitioner has to approach this Court by filing a writ petition in W.P.No.582 of 2009 and this Court passed an order dated 30.09.2009 directing the very same second respondent herein to grant the relief of interest at the rate of 18% per annum from the date of retirement, i.e., from 28.02.2002 till the date of payment, i.e., on 09.09.2009 and further directed that the said interest shall be paid within twelve weeks from the date of receipt of a copy of that order. It is also brought to the notice of this Court that the said order of this Court was complied with by paying 18% interest for such delayed disbursement in payment. Therefore, it is very clear that the rate of interest fixed by this Court is binding on the second respondent even in respect of interest claimed by the petitioner for other benefits. The said order of this Court passed by the learned Single Judge, as stated above, has also reached finality as the same was not challenged by the second respondent and the same was complied with.

21. In view of the aforesaid reasons, this Court is constrained to set aside the impugned order and accordingly, the impugned order dated 22.09.2006 passed by the second respondent herein in Letter No.PT-1/10265/2001 is hereby set aside. Consequently, the second respondent herein is directed to pay interest at the rate of 18% per annum for the delayed disbursement of retrial to the petitioner. It is made clear that the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this Order."



7. The above decision is squarely applicable to the facts and circumstances of this case, as in this case also the charge memos issued against the petitioner were quashed by the Court and as such, the petitioner is deemed to have been in service without any departmental proceedings on the date of his retirement and therefore, he cannot be deprived of his right to claim interest for the delayed payment of retiral benefits on the ground of pendency of disciplinary proceedings against him. From the above decision, it is clear that the petitioner is entitled to the interest at the rate of 12% p.a. for the DCRG as per the Tamil Nadu Pension Rules and in respect of the other benefits, the petitioner is entitled to the interest at the rate of 18% p.a.

8. In view of the above, the respondents are directed to pay the interest at the rate of 12% p.a. for the belated payment of DCRG as per the Tamil Nadu Pension Rules and for the belated payment of other retirement benefits, the respondents shall pay interest at the rate of 18% per annum from the next day of his retirement ie., from 01.04.2008 to till the date of actual payment within a period of twelve weeks from the date of receipt of a copy of this order.

9. This Writ Petition stands disposed of accordingly.
No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The Principal Secretary to
Government Rural Development
and Panchayat Raj Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Commissioner of Rural Development
and Panchayat Raj, Panagal Building,
Saidapet, Chennai - 600 015.



3.The District Treasury Officer,
Virudhunagar,
Virudhunagar District - 636 705.

4.The Sub Treasury Officer,
Sivakasi,
Virudhunagar District.

+1 CC to MR.SPL GP (SR-103264[F] dated 04/12/2019)

+1 CC to MR.VEERA ASSOCIATES, Advocate (SR-103359[F] dated
04/12/2019)

Order made in
W.P(MD)No.17953 of 2013
03.12.2019

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