BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.01.2019

DELIVERED ON : 25.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.19164 of 2017

S.Rajasekaran ... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its
Secretary,
Home (Courts) Department,
Secretariat,
St. George Fort,
Chennai.

2.The Registrar General,
High Court,
Chennai.

3.The Registrar (Administration),
Madurai Bench of Madras High Court,
Madurai.

4.The Principal District Judge,
Karur District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the fourth respondent in R.No.NIL/2017, dated 17.07.2017 and quash the same and consequently, direct the respondents to pay interest at the rate of 24% per annum for the belated payments towards the retirement benefits of the petitioner.

For Petitioner : Mr.B.Saravanan

For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader for R.1

Mr.K.Samidurai for R.2 to R.4
* * * * *

ORDER

R.SUBBIAH,J.

This writ petition has been filed seeking a writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the fourth respondent in R.No.NIL/2017, dated 17.07.2017 and quash the same and consequently, direct the respondents to pay interest at the rate of 24% per annum for the belated payments towards the retirement benefits of the petitioner.

2. The case of the petitioner is that the petitioner was working as Steno-Typist from 09.06.1978 till 22.01.1982 in Town and Country Planning Department and thereafter, he was serving in the Judicial Department from 23.01.1982 in various posts and he rendered his unblemished service for more than 32 years. While he was working as Chief Administrative Officer in District Court, Karur and was going to retire on 31.05.2013 on attaining the age of superannuation, he was suspended by virtue of the order of the fourth respondent in R.No.2303/2013/A1, dated 29.05.2013. Subsequently, a charge memo was issued on 30.04.2014 nearly after a lapse of one year from the date of his suspension. The petitioner participated in the disciplinary proceedings initiated against him and after full-fledged enquiry, the petitioner has been discharged from all the charges levelled against him as per the order of the fourth respondent dated 20.01.2016. Thereafter, he was permitted to retire with retrospective effect from 31.05.2013 on superannuation. When he applied for his retirement benefits to the fourth respondent, a certificate dated 10.03.2016 was issued to the effect that no charges or disciplinary proceedings are pending against the petitioner and also there were no dues to be recovered from him. Thereafter, the retirement benefits have been given to the petitioner on various dates between 23.03.2016 and 02.12.2016.

3. It is the main grievance of the petitioner that though the retirement benefits ought to have been granted to him immediately upon his superannuation, the same had been given with a delay of 2 1/2 years and hence, the petitioner is entitled to interest in respect of the retirement benefits as per Rule 45(1-A)(i)(a) of the Tamil Nadu Pension Rules, 1978, mandates that interest shall be payable for the period beyond three months from the date of retirement, provided the Government Servant is exonerated from all the charges. Thus, he made a representation to the first respondent on 13.03.2017 and the same was forwarded to the second respondent by letter dated 21.03.2017 and in turn, it was forwarded to the fourth respondent on 11.05.2017 for necessary action, however, the same came to be rejected by virtue of the impugned order dated 17.07.2017. Challenging the same, the petitioner is before this Court.

4. When the matter is taken up for hearing, the learned Counsel for the petitioner contended that for no fault on the part of the petitioner, he cannot be penalised by denying interest for the belated payment of retirement benefits and also mainly relied on the judgment of this Court in ***P.Nagarathna Pandian v. The Managing Director, Tamil Nadu Housing Board, 493, Anna Salai, Nandanam, Chennai – 600 035 and another*** [W.P.No.6902 of 2006, decided on 30.07.2010], wherein it is held as follows:

> "11. The reason stated by the respondents that only due to the pendency of the charge against the petitioner payment of terminal benefits was delayed, cannot be accepted as the charge, which was found not proved was ultimately dropped. The delay in completing the disciplinary proceeding has already caused mental agony to the petitioner after reaching the age of superannuation. The retirement benefits payable as on 30.11.1998 was delayed for about six years for which the petitioner cannot be blamed. It is not the case of the respondents that the disciplinary proceeding was delayed at the instance of the petitioner. From the perusal of the typed set of papers filed, it is evident that the enquiry officer submitted his report stating that the charge was not proved. The said Enquiry Officer's report was submitted as early as on 31.8.1999. Even assuming that the pendency of the charge was not the reason for not paying the terminal benefits, there was unreasonable delay in dropping the charge, though the delay is explained in the counter affidavit. For no fault on the part of the petitioner, petitioner cannot be penalised by denying interest for the belated payment of retirement benefits.
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> 12. In view of the above findings and decisions of the Supreme Court and of this Court, the writ petition is allowed and the impugned order is set aside. The second respondent is directed to pay the statutory interest for the gratuity amount, provident fund, special provident fund. For commutation of pension and surrender of earned leave, the second respondent is bound to pay interest for the belated payment as per the Government Order referred above. The second respondent is directed to comply with this order within a period of six weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed."

5. For the same proposition, he also relied on the judgment of this Court in ***S.Muppudathi v. The Secretary to Government, Department of Education, Fort St. George, Chennai and others*** [W.P (MD)No.9974 of 2011, decided on 08.02.2017] and prayed for granting statutory interest to the terminal benefits of the petitioner.

6. *Per contra*, the learned Counsel for the respondents 2 and 4, reiterating the averments in the counter affidavit filed by the fourth respondent, contended that pursuant to the communication dated 23.04.2014 directing the fourth respondent to call for explanation from the petitioner, a show cause notice was issued to the petitioner on 30.04.2014. The petitioner submitted his explanation and thereafter, vide letter dated 03.07.2014, it was informed that the explanation of the petitioner was not satisfactory and directed to frame proper charges and proceed with the disciplinary proceedings. On 05.11.2014, charges were framed against the petitioner and on 04.02.2015, additional charges were also famed. Initially, the learned Additional District Judge was appointed as Enquiry Officer and subsequently, the learned Principal Subordinate Judge was appointed and on enquiry, the Enquiry Officer submitted his findings on 30.11.2015 and the same was accepted and the petitioner was discharged from the charges on 20.01.2016 and thereafter, the fourth respondent took necessary steps to grant the retirement benefits to the petitioner from 11.02.2016 to 14.03.2016 oon various dates and the pensionary benefits of the petitioner were also paid to him by the authorities concerned in the year 2016 itself. Though the petitioner is entitled for interest as per Rule 45(A)(a) and (i)(a) of the Tamil Nadu Pension Rules, 1978, the State Government is the competent authority and the fourth respondent is not empowered to grant interest to the terminal benefits of the petitioner and thus, prayed for the dismissal of this writ petition.

7. We have carefully considered the rival submissions and perused the materials available on record including the judgments relied on by the learned Counsel for the petitioner.

8. It is seen that the petitioner was suspended by virtue of the order of the fourth respondent in R.No.2303/2013/A1, dated 29.05.2013. After a lapse of one year, a charge memo was issued on 30.04.2014. The petitioner participated in the disciplinary proceedings initiated against him and after full-fledged enquiry, the petitioner was discharged from all the charges levelled against him as per the order of the fourth respondent dated 20.01.2016. Thereafter, he was permitted to retire with retrospective effect from 31.05.2013 on superannuation. Thereafter, he applied for his retirement benefits to the fourth respondent and then, a certificate dated 10.03.2016 was issued to the effect that no charges or disciplinary proceedings are pending against the petitioner and there were no dues to be recovered from him. Thereafter, the retirement benefits were given to the petitioner on various dates between 23.03.2016 and 02.12.2016.

9. Now, the main relief sought for by the petitioner is that even though the retirement benefits ought to have been given to him immediately upon his superannuation, the same had been given with a delay of 2 1/2 years and hence, he is entitled to interest in respect of the retirement benefits as per Rule 45(1-A)(i)(a) of the

Tamil Nadu Pension Rules, 1978, which mandates that interest shall be payable for the period beyond three months from the date of retirement, provided the Government Servant is exonerated from all the charges. He, therefore, submitted a representation to the first respondent on 13.03.2017, which was forwarded to the second respondent by letter dated 21.03.2017, who in turn, forwarded the same to the fourth respondent on 11.05.2017 for necessary action. However, the claim of the petitioner was rejected by way of the impugned order dated 17.07.2017. Hence, the petitioner is before this Court.

10. The relevant provision of the Tamil Nadu Pension Rules, 1978, is usefully extracted hereunder:

> "45-A. Interest on delayed payment of gratuity.- (1) Interest at the rate of eight per cent per annum shall be payable on the death-cum-retirement gratuity paid beyond (a) period of two months from the date of retirement of a Government Servant.
>
> Provided that on and from the 12th June 1987, the rate of such interest shall be as follows:
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> (a) seven per cent per annum beyond a period of three months and upto one year; and
>
> (b) ten per cent per annum beyond a period of one year.
>
> ***** *****
>
> ***** *****
>
> (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. ...."

11. Though the learned Counsel for the petitioner relying upon the judgments of this Court submitted that the interest at the rate of 18% per annum shall be awarded to the terminal benefits of the petitioner for such a delay in paying the same to the petitioner, we do not find that there is any inordinate delay in payment of the terminal benefits to the petitioner. It is not in dispute that the terminal benefits ought to have been settled to the petitioner immediately upon his superannuation, but, the same had been paid to him with a delay, forcing him to approach this Court.

12. Considering the facts and circumstances of the case, we are not inclined to set aside the impugned order passed by the fourth respondent in R.No.NIL/2017, dated 17.07.2017, however, we make it clear that the petitioner is entitled for the statutory interest under Rule 45(1-A)(i)(a) of the Tamil Nadu Pension Rules,

1978.

13. Accordingly, the State Government - the first respondent is directed to pay statutory interest at the rate of 8% per annum on the death-cum-retirement gratuity amount paid to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

14. With the above direction, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar (P & A)

// True Copy //

Sub Assistant Registrar(CS)

rsb

Toj

1.The Secretary,
State of Tamil Nadu,
Home (Courts) Department,
Secretariat,
St. George Fort,
Chennai.

2.The Registrar General,
High Court, Chennai.

3.The Registrar (Administration),
Madurai Bench of Madras High Court,
Madurai.

4.The Principal District Judge,
Karur District.

+1CC TO MR.B.SARAVANAN, Advocate Sr. No. 56512

ORDER MADE IN
W.P(MD)No.19164 of 2017
25.03.2019

TR (05.04.2019) 6P 6C