BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.20107 of 2018

R.Manoharan ... Petitioner

Vs.

1.The Management of the Tamil Nadu Transport Corporation (Kumbakonam) Limited,
Rep. by its Managing Director,
Kumbakonam.

2.The Administrator,
Tamil Nadu State Transport Employees Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai,
Chennai - 2. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the first respondent to pay the amount of Rs.31,364/- to the petitioner, as admitted by the first respondent in the letter, dated 03.09.2018 as settlement of his terminal benefits forthwith together with 18% interest per annum and further directing the respondents to pay pension and commutation of pension along with arrears from the month of April, 2016 forthwith, under TNSTC Pension Fund Rules, together with 18% per annum within a time frame fixed by this Court.

For Petitioner	:	Mr.S.Arunachalam
For R - 1	:	Mr.D.Sivaraman
For R - 2	:	Mr.A.P.Muthupandian

ORDER

Seeking a direction to the first respondent, to settle the terminal benefits due to the petitioner together with interest at 18% per annum and also pay pension and commutation of pension along with arrears from the month of April, 2016 together with interest, the present writ petition came to be filed.

2.The brief facts of the case are that the petitioner worked in the first respondent Corporation as Conductor and after rendering 30 years of service, he retired from service on 31.03.2016, on reaching the age of superannuation. However, the terminal and pensionary benefits due to him have not been settled.

Hence, he made repeated representations to the first respondent and the same resulted in part payment only. According to the petitioner, though he is entitled to receive all the terminal and pensionary benefits, the first respondent has not settled the same in entirety. Hence, the present writ petition has been filed for the aforesaid relief.

3.Before proceeding further, it is worthwhile to deal with the cases, which are dealt with by this Court and the Supreme Court as well as the Government Orders, sanctioning retirement benefits, pension and interest on belated payment of retiral benefits, for better appreciation of the subject matter in issue.

4.The Government, with an object to achieve for granting/sanctioning provisional pension immediately on the retirement of the Government servants, without causing undue delay, issued Government Orders periodically. Due to administrative reasons, such sanction was not done in time and hence, the Government decided to pay interest on all delayed payments of service benefits etc. The pension sanctioning authority was also directed to keep proper records of such interest payments and fix the responsibility for the delay caused on the person concerned.

5.In respect of interest, the rate of interest payable for the belated payment was also revised periodically in G.O.Ms.No.517, Finance (Pension) Department, dated 12.06.1987.

6.Expeditious disposal of Family Pension, Death-cum-retirement Gratuity and other terminal benefits payable to the family members of the Government servants dying in harness was taken into consideration and time limit for early settlement was also fixed by yet another G.O.Ms.No.86, Finance (Pension), dated 10th February, 1989.

7.Revised rate of interest on delayed payment of Death-cum-retirement Gratuity was also fixed in G.O.Ms.No.122 Finance (Pension) Department, dated 20th February, 1995.

8.By G.O.Ms.No.196 Finance (Pension) Department, dated 17.05.1999, the Government considered the need of immediate sanction of Provisional Family Pension to the Government servants, who died in harness.

9.Despite the Government Orders referred to above, the payments of the retiral benefits were time and again effected belatedly.

10.Such issue was considered by the Apex Court in a case reported in **2001 (9) SCC 687 (Vijay L.Mehrotra Vs. State of Uttar Pradesh and others)**, wherein it has been observed as follows:-

"3.In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.

4.In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, ie., 31.08.1997 till the date of payments."

11.The Hon'ble Supreme Court in ***D.D.Tewari (Dead) through Legal Representatives v. Uttar Haryana Bijli Vitran Nigam Ltd and others [(2014) 8 SCC 894]***, held that erroneous withholding of gratuity amount to which employee is legally entitled, entails penalty on delayed payment and that, denial of interest from the date of entitlement till the date of payment of pension, has resulted in miscarriage of justice and hence, awarded interest at 9% on delayed payment, failing which, the same shall carry interest at 18% p.a.

12.Following the aforesaid decision of the Supreme Court, the Division Bench of this Court in K.Rajendran and others v. the Tamil Nadu State Transport Corporation (Madurai) Ltd and others [CDJ 2015 MHC 8204] rendered in WA.(MD) Nos.383 to 457 of 2015 on 12.06.2015, passed the following order:

"1.The learned Additional Advocate General submits that he has obtained written instructions vide letter No.7945/E/2015-2 dated 11/6/2015 that the terminal benefits of the appellants would be settled through twelve equal monthly instalments, carrying interest of 6%p.a.

2.The said statement is thus taken on record and the respondents will be bound by the same. We have to keep in mind the judicial pronouncement of the Hon'ble Supreme Court in D.D.Tewari (D) Thr.Lrs. Vs.Uttar Haryana Bijli Vitran Nigam Ltd. & others (2014 (9) Scale -78), wherein, it is held that in case of any delay in making the payment of the instalments, the interest payable would become 18% pa for the delayed period apart from any other remedy which may be available to the appellants for non-compliance of undertaking given to this Court."

13.Similar order was relied on and the same was passed by this Court in number of cases viz., (i)P.Subramanian v. The Managing Director, Tamil Nadu State Transport Corporation, Tirunelveli Ltd and another [CDJ 2016 MHC 5099]; (ii)R.Krishnaswamy v. K.Venkataramani [MANU/TN/0525/2017] rendered in WP.No.43618 of 2016 on 03.02.2017; (iii)T.Nagarajan and others v. the Managing

Director, Tamil Nadu State Transport Corporation (Tirunelveli) Ltd and others [CDJ 2017 MHC 1908], etc.

14.Citing the pendency of criminal cases and punishments etc., some of the petitioners were not granted the terminal benefits and ultimately the same was settled belatedly, but without interest. When such issue was taken into consideration by this Court in W.P.No.8707 of 2006, by order dated 12.03.2007 held as follows:-

"3.The grievance of the petitioner is that as a result of the illegal dismissal, he was not permitted to retire on 31.01.1967 itself and he has been permitted to retire only in the year 1992, as a result of which his terminal benefits due to him were paid belatedly. In view of the belated payments made to him, he has suffered loss and hence by way of representation to the Collector, Periyar District and to the Principal Commissioner and Commissioner for Revenue Administration, Madras-5, dated 03.02.1995 claimed interest on the terminal benefits belatedly paid to him. By an order, dated 08.09.1995, the District Collector, Periyar District stated that only in respect of Death-cum-Retirement Gratuity amount, interest would be paid and that necessary proposals have been sent to the Government and for the belated payment of all the other amounts, no interest would be paid, since there is no provision in the Rules. Hence, the petitioner was constrained to file the said Original Application challenging the order referred to above.

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8.As rightly pointed out by the learned counsel for the petitioner, the order of dismissal has been set aside by the Government in pursuance of G.O.(2D)No.123, Revenue Department, dated 18.11.1992. In that Government Order it has been specifically stated that there is no pecuniary loss to the Government. Further, it reads that the charges are not serious in nature, which warranting the dismissal from service. In view of the said specific stand taken by the Government, the petitioner is entitled to interest for the belated payment of terminal benefits. For the belated payment of terminal benefits, the petitioner cannot be blamed. Since the petitioner was facing departmental proceedings, terminal benefits have been with held by the Government. Now the order of dismissal has been set aside by an order, dated 18.11.1992 as referred to above, the petitioner will be entitled to interest for the belated payment of pension, commutation of pension etc. The impugned order dated 08.09.1995 is therefore, liable to be set aside and accordingly, set aside. The petitioner will be entitled to get interest at the rate of 10% per annum for the belated payment of Pension, Commutation of Pension, Death-cum-Retirement Gratuity, encashment of earned leave, General Provident Fund, Special Provident Fund and Pay fixation *arrears."*

15.Such view was affirmed by the Division Bench of this Court in W.A.No.886 of 2007, dated 17.12.2018 and the same reads as follows:-

"5.In ***Dr.Uma Agarwal Vs. State of U.P., reported in (1993)3 SCC 438****, the Supreme Court held that,*

> *"...... grant of pension is not a bounty but a right of the Government servant. The Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired Government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the Rules/Instructions apart from other relevant factors applicable to each case."*

6.The contention of the appellant that as per the Government norms, interest can be paid only on Death-cum-Retirement Gratuity, in case of delay and the same cannot be awarded to any other retiral benefits, is not tenable, in view of the decision of the Supreme Court in ***S.K.Dua Vs. State of Haryana*** *reported in* ***2008 (3) SCC 44.*** *In the reported case, the appellant therein was served with three charge sheets/show cause notices in June 1998, few days before his retirement. However, he retired on 30.06.1998 on reaching the age of superannuation. He was paid provisional pension, but other retiral benefits were not given to him, which included commuted value of pension, leave encashment, gratuity, etc. They were withheld till the finalisation of disciplinary proceedings. While answering the issue as to whether the appellant therein was entitled to interest on delayed payment of retiral benefits, in the absence of any statutory rules/administrative instructions or guidelines, the Supreme Court, at paragraph 14 of the Judgment, held as follows:-*

> *"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 administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in the 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 limine even without issuing notice to the respondents."

16.The very same issue was considered by this Court reported in *2010 (8) MLJ 254 (R.Ganesan and another Vs. Rane Luk Clutch (P) Limited and others)*.

17.Following the said order, this Court in a Writ Petition filed seeking retirement benefits with interest for the belated payment elaborately considered in the case reported in *2010 (7) MLJ 577 (P.Nagarathna Pandian Vs. Managing Director and others)*.

18.Insofar as the cases in which the retiral benefits are denied on account of disciplinary proceedings and the delay in disposal of the same would entitle the employee to get interest on delayed payment, this Court, in various cases, particularly, in *P.V.Mahadevan v. The Secretary to Government [2011(2) CWC 401]*, held that the departmental delay due to procedural lapses, etc., is untenable.

19.At this juncture, it is also useful to refer to Rule 45-A of the Tamil Nadu Pension Rules, which is re-produced 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:

(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:

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; and

(b) for the fraction of a month.]

[(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;

(b) three months from the date of death where the Disciplinary proceedings are dropped on account of death of a Government servant;

(c) three months from the date of issue of orders by the competent authority allowing payment of Death-cum-Retirement Gratuity where the Government servant is not fully exonerated on the conclusion of disciplinary proceedings and where the competent authority desires to allow payment of Death-cum-Retirement Gratuity.

(ii) six months from the date of retirement of a Government servant otherwise than on superannuation under Fundamental Rule 56(2), or 56(3), or Rules 33, 36, 38, 39 and 42 of the Tamil Nadu Pension Rules, 1978;

(iii) six months from the date of death of a Government servant while in service and where the delay is not caused on account of more than one claimant;

(iv) three months from the date of issue of orders revising the emoluments where the amount of Death-cum-Retirement Gratuity already paid is enhanced on account of revision of emoluments; and

(v) six months from the date of absorption in the case of permanent absorption in the Public Sector Undertakings or Autonomous bodies otherwise than on enmass transfer on conversion of Government department or a part thereo into Public Sector Undertakings or Autonomous bodies.]

[(2) The Government shall be the authority competent to sanction such interest.]"

20.Thus, the principles enunciated from the aforesaid decisions rendered by the Supreme Court as well as by this Court and also in the light of the Government Orders and the relevant provisions of law, are that the benefits bestowed by law upon an employee in recognition of his/her committed, continuous, loyal and devoted duty by payment of the pension, gratuity, leave salary etc., are in the nature of property and such right cannot be taken away without following due process of law; further, the grant of pension is not a bounty and the Government is obliged to follow the relevant Rules in that regard; Also that, the delay in settlement of retiral benefits and payment of pension is frustrating the employees and the same could have been compensated by way of interest.

21.In the case on hand, the petitioner, after rendering 30 years of unblemished service, retired from duty. However, without any plausible reason, the first respondent has not settled the retiral and pensionary benefits due to the petitioner in toto. Thus, applying the aforesaid principles herein, this Court deems it fit to issue appropriate direction to the respondent authorities in favour of the petitioner, as he is entitled to receive the same in entirety, that too, with interest for the belated payment of the same.

22.In view of the above, the respondent authorities are directed to consider the claim of the petitioner in line with the observations made in the earlier Paragraph Nos.4 to 20 of this order and pay the benefits accordingly. Insofar as the interest on belated payment of retiral benefits is concerned, considering the facts and circumstances of the case and having regard to the present day cost of living, the respondent authorities are directed to pay interest at 8% per annum, from the date of entitlement till the date of payment of entire amount, failing which, the same shall carry penal interest at 18% p.a. for the default period. Such an exercise shall be completed, within a period of six weeks from the date of receipt of a copy of this order.

23.The Writ Petition stands disposed of on the above terms. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

ps/rk

To

1.The Managing Director,
Management of the Tamil Nadu Transport
Corporation (Kumbakonam) Limited,
Kumbakonam.

2.The Administrator,
Tamil Nadu State Transport Employees Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai, Chennai – 2.

+1CC TO MR.D.SIVARAMAN, Advocate Sr. No.50801
+1CC TO MR.S.ARUNACHALAM, Advocate Sr. No.50855

W.P(MD)No.20107 of 2018
28.02.2019

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