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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.12808 of 2014

R.Vijayakumar ... Petitioner

vs.

1)The Secretary to the Government,
Home Department,
St.George Fort,
Chennai.

2)The Commandant,
14th Battalion Tamil Nadu Special Police,
Palani,
Dindigul District. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Impugned Order passed by the 2nd Respondent in C.No.D2/742/2014 dated 06.05.2014 and quash the same as illegal and consequently directing the 2nd Respondent to pay the interest on the retirement benefits which was paid belatedly.

For Petitioner : Mr.V.P.Rajan, Advocate
For Respondents : Mr.Dhayalan, Government Advocate

ORDER

The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the Impugned Order passed by the 2nd Respondent in C.No.D2/742/2014 dated 06.05.2014 and quash the same as illegal and consequently direct the 2nd Respondent to pay the interest on the retirement benefits which was paid belatedly.

2.Learned counsel for the petitioner would submit that while the petitioner was working as Inspector of Police in R.S.Mangalam Police Station, he was placed under suspension on the ground of pendency of criminal case filed against him and pursuant to the acquittal in the criminal case, suspension was revoked. In the disciplinary proceedings initiated against the petitioner, punishment of reduction in time scale of pay by one stage for one

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year without cumulative effect was imposed on the petitioner. Thereafter, the petitioner made representation to the 1st respondent to treat the suspension period as duty period in view of the acquittal in the criminal case and since it was not considered, he filed W.P(MD)No.8451 of 2008 to consider his representation which was disposed of on 14.12.2009 directing the 1st respondent to consider the petitioner's representation, but the 1st respondent did not pass any order. While so, the petitioner was allowed to retire from service on 31.01.2011 on reaching the age of superannuation and thereafter, when the petitioner's pension proposal was under progress, the 1st respondent passed G.O(D)No.646 dated 06.07.2011 setting aside the above punishment and also ordered to treat the period of suspension as duty period. Thereafter, the 2nd respondent revised his pay and treated the suspension period as duty period. According to the petitioner, there was a delay in disbursing the retirement benefits for more than 23 months and therefore, he made a representation dated 06.02.2014 claiming interest and therefor, he also filed W.P(MD)No.3434 of 2013 which was disposed of on 28.02.2014 with a direction to the 2nd respondent to consider the petitioner's claim of interest for the belated settlement of his retirement benefits.

3.It is further submitted that the 2nd respondent passed the impugned order dated 06.05.2014 stating that if the petitioner did not submit the request for keeping his pension proposal pending till the order from the 1st respondent, retirement benefits would have been settled immediately. It is the contention of the learned counsel for the petitioner that though the 1st respondent passed the above G.O., the 2nd respondent disbursed the retirement benefits after 15 months as such, the reasoning in the impugned order is arbitrary and the same is liable to be set aside. In support of his contention, the learned counsel would rely on the judgment of the Hon'ble Supreme Court reported in (2001) 9 SCC 687, Vijay L.Mehrotra vs. State of U.P and others. Thus, he would pray for setting aside the impugned order.

4.The 2nd respondent has filed counter affidavit. Learned Government Advocate appearing for the respondents would state that the petitioner submitted a petition dated 02.03.2011 requesting to keep his pension proposal pending till the receipt of the Government order and since the G.O(D)No.646, dated 06.07.2011 was issued setting aside the punishment alone and there was no specific order regarding settlement of suspension period as duty, further action was taken in this regard. While so, the petitioner submitted another petition dated 06.09.2011 requesting to move him to the selection grade in the post of Inspector of Police and refix his pay with arrears and the process in this regard took time and at that time, even the petitioner had agreed for the belated settlement of pensionary benefits since he has got monetary gain due to settlement of suspension period and refixation of pay. Therefore, it could not

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be said that there was delay on the part of the respondents in settling the petitioner's retirement benefits and in fact, the delay was caused on account the two petitions dated 02.03.2011 and 06.09.2011 submitted by the petitioner and hence, the petitioner is not entitled to interest. Thus, he would pray for dismissal of the writ petition.

5.Heard both sides.

6.Perusal of record shows that orders have been passed by this Court in W.P(MD)No.8451 of 2008 as early as on 14.12.2009 directing the respondents to consider the petitioner's representation dated 04.08.20008 for treating the suspension period as duty period. However, after the period of two years, G.O(D)No.646, has been passed on 06.07.2011 setting aside the punishment and also ordering to treat the suspension period as duty period. Thus, there is a delay of two years in passing the G.O and had the above G.O been passed as directed by this Court in W.P(MD)No.8451 of 2008, the petitioner would have been benefited with retirement benefits on the date of his retirement itself. Further, in the judgment relied on by the petitioner, the Apex Court held that 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. Since there was no reason or justification for not making the payments for months together in the above reported case, the Supreme Court ordered simple interest at the rate of 18 per cent with effect from the date of retirement till the date of payment.

7.In my considered opinion, the said judgment is squarely applicable to the facts of this case. Therefore, the order impugned in C.No.D2/742/2014 dated 06.05.2014 passed by the 2nd respondent is set aside and the respondents are directed to pay the petitioner simple interest at the rate of 18 per cent per annum with effect from the date of his retirement i.e., 31.01.2011 till the date of payment.

With the above direction, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

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   Home Department,
   St.George Fort,
   Chennai.

2) The Commandant,
   14th Battalion Tamil Nadu Special Police,
   Palani,Dindigul District.

+1 CC to M/s.SPL GP (SR-104219[F] dated 10/12/2019)

+1 CC to M/s.V.P..RAJAN, Advocate (SR-104432[F] dated 11/12/2019)

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TK/SAR./02.01.2020/4P/5C

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