BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.10.2019
CORAM
THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
W.P.(MD)No.5148 of 2014

S.Natarajan ... Petitioner

vs.

1.The Accountant General
(Accounts and Entitlements),
Tamilnadu State, 361, Anna Salai,
Chennai.

2.The Secretary,
Government of Tamil Nadu,
Finance (Pension) Department,
Secretariat, Chennai.

3.The Director,
Adi Dravidar Welfare Department,
Chepauk, Chennai.

4.The Special Tahsildar,
Adi Dravidar Welfare Department,
Madavarvalagam,
Srivilliputhur,
Virudhunagar District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents to pay the interest for the belated payment of commutation of pension and other benefits amount to the petitioner.

For Petitioner : Mr.M.Joseph Thatheus Jerome
for Mr.S.Alagusundar

For R1 : Mr.P.Gunasekaran

For R2 to R4 : Mr.R.Murugan
Additional Government Pleader

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O R D E R

This Writ Petition is filed for issuing a Writ of Mandamus to direct the respondents to pay the interest for the belated payment of commutation of pension and other benefits, to which the petitioner is entitled to.

2.The petitioner served as Headmaster of Government Adi Dravidar Primary School from 13.10.1973 to 09.07.1989. Later, he was transferred to Virudhunagar District and posted as Secondary Grade Teacher, because, there was no vacancy in the post of Primary School Headmaster. The petitioner retired as a Secondary Grade Teacher on 30.06.2000. It is not in dispute that the petitioner was entitled to Selection Grade after completion of 10 years and Special Grade after completion of 20 years.

3.Since the petitioner was transferred and posted as Secondary Grade Teacher, due to administrative reasons, it is stated that the petitioner is entitled to Selection and Special Grade in the post of Headmaster after completion of 10 years and 20 years respectively. It is on account of the entitlement of the petitioner to pay protection, it is stated that the petitioner is entitled to get his pay revised in the post of Headmaster, even though he retired on 30.06.2000 as Secondary Grade Teacher. Though the petitioner's entitlement was accepted, there was recovery proceedings denying the benefit of G.O.Ms.No.160, dated 23.08.2005 . It is stated that in response to the petitioner's representation, the Accountant General sent a communication, dated 21.11.2005 stating that the petitioner is not entitled to the benefit of G.O.Ms.No.160, dated 23.08.2005. This communication was challenged by the petitioner before this Court in W.P.(MD)No.949 of 2008.

4.This Court allowed the Writ Petition and quashed the order that was challenged in the writ petition. It was thereafter, the order of learned Single Judge of this Court was challenged by the first respondent in W.A.(MD)No.747 of 2011 and the appeal filed by the first respondent was also dismissed on 28.02.2012.

5.It is not in dispute that the difference in amount was settled in full and difference on account of revised pay giving the benefit of G.O.Ms.No.160 was calculated and disbursed to the petitioner pursuant to the order passed by the Honourable Division Bench of this Court. However, the petitioner has come forward with the present writ petition to direct the respondents to pay interest for the belated payment on commutation of pension and other monetary benefits, saying that the belated payment was purely on account of administrative reasons and mistake.

6.It is not in dispute that there is a statutory provisions making the respondents liable to pay the interest for the belated payment. Rule 45 of Tamil Nadu Pension Rules, 1978, reads as follows:

"45-Death-cum-Retirement Gratuity

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.

Amendment to the Tamil Nadu Pension Rules, 1978.

(G.O.No.487, Finance (Pension), 7th October, 2009)

No.SRO B-68/2009-In exercise of the powers conferred by the proviso to Article 309 of Constitution of India, the Government of Tamil Nadu hereby makes the following amendment to the Tamil Nadu Pension Rules, 1978.

Amendment

In the said rules, in rule 45-A, in sub-rule 1, in the second proviso, for the expression "provided further that" the following expression shall be substituted, namely:-

"Provided further that on and from 20th February, 1995, the rate of such interest shall be twelve per cent per annum (compounded annually)

[Provided also that on and from 1st April 2004, the rate of such interest shall be at the rate of interest payable, on General Provident Fund during the year of retirement of the Government servant (compounded annually)

Provided also that"

(a)Where the institution of departmental or judicial proceedings 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 or ders 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 super-annuation under Fundamental Rules 56(2) and 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)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 thereof into Public Sector Undertakings or Autonomous Bodies.]

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

7.Based on the said provisions, it is submitted that on and from 20th February, 1995, the petitioner is entitled to interest at 12% per annum (compound). It is also indicated that on and from 1st April, 2004, the rate of such interest shall be at the rate of interest payable, on General Provident Fund during the year of retirement of Government service. The respondents can avoid interest for the belated payment, only when the payment is belated on account of any departmental or judicial proceedings against the retiring Government servant.

8.In the counter affidavit filed by the respondents 2 to 5, it is stated that the delayed payment of commutation is not the fault of the respondents, but due to administrative reasons. Though it is contended that there is no Rule or provisions for interest on belated payment on commutation of pension or other retirement benefits other than Death-cum-Retirement-Gratuity, this Court is unable to subscribe to the stand taken by the respondents. In the present case, difference in pension is on account of wrong calculation of petitioner's pay.

9.The learned Counsel for the first respondent has filed a counter and contended that the benefits, which was actually due to the petitioner, were authorised on 04.10.2000 and that the petitioner had filed the earlier writ petition eight years after his retirement and that therefore, the petitioner, who has come forward before this Court with a delay eight years, cannot claim interest for the belated payment. The learned Counsel for the first respondent, however, admitted that as per Rule 45-A of Tamil Nadu Pension Rules, 1978, the interest at 8% per annum shall be payable on the Death-cum-Retirement-Gratuity beyond the period of 2 months from the date of retirement of a Government servant. It was further contended that earlier the petitioner filed a writ petition only in the year 2008 and therefore, the direction can be issued to pay interest only from the date of filing of writ petition.

10.In this case, the petitioner's entitlement to the higher pay is not in dispute. The petitioner's entitlement was questioned and opposed in the writ petition filed by the petitioner even in the year 2008. The first respondent filed an appeal as against the order that was passed in the writ petition. In such circumstances, the contention of the respondents that the delay in filing the writ petition, as a reason for denying interest, cannot be accepted. It is to be noted that the liability of respondents under Rule 45-A of Tamil Nadu Pension Rules, 1978, is a Statutory liability. For every belated payment, the liability is fastened by the Statute on the respondents. In a case, where the Court has to exercise its discretion for awarding interest, consideration will be different and the period of delay as well as other factual events may have a role to tilt the balance.

11.In the present case, the liability being statutory, the respondents cannot dispute the liability merely because the petitioner has approached the Court with a delay. From the language employed in Rule 45-A, Tamil Nadu Pension Rules,1978, this Court is of the view that the statutory obligation of the respondents is to disburse the retirement benefits on their own without any demand. Even after the order in the writ petition on 31.08.2010, there can be no excuse. Merely because, there was delay in filing the first writ petition, after the settlement of issues with regard to petitioner's entitlement, the respondents cannot avoid interest, especially, after contesting the writ petition and filing an appeal as against the order in writ petition.

12.Having regard to the over all circumstances, this Court is satisfied that the petitioner is entitled to interest at 12% per annum from the date of retirement, ie., 30.06.2000, on account of belated payment on the differential amount. The fourth respondent is directed to calculate interest and pay the same within a period of four weeks from the date of receipt of a copy of this order.

13.In response to an query raised by the fourth respondent, it is stated that the first respondent, vide communication, dated 21.09.2007, has clarified that no specific authorisation from Accountant General is necessary and that interest can be worked out by the concerned Department. Hence, the fourth respondent is directed to calculate the interest in terms of Rule 45-A of Tamil Nadu Pension Rules, 1978 on the differential amount payable from 04.10.2000 to 04.09.2012.

14.Accordingly, this writ petition is allowed as directed above. No costs.

Sd/-
Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Accountant General
(Accounts and Entitlements)
361, Anna Salai, Chennai.

2.The Secretary,
Government of Tamil Nadu,
Finance (Pension) Department,
Secretariat, Chennai.

3.The Director,
Adi Dravidar Welfare Department,
Chepauk, Chennai.

4.The Special Tahsildar,
Adi Dravidar Welfare Department,
Madavarvalagam,
Srivilliputhur,
Virudhunagar District.

+1 CC to M/s.P.GUNASEKARAN, Advocate SR-90998.
+1 CC to M/s.S. ALAGU SUNDAR, Advocate SR-91026.
+1 CC to GP SR- 91202.

W.P.(MD)No.5148 of 2014
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