IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.Nos.291 and 293 of 2020
and C.M.P.No.4929 of 2020

K.Manian .. Appellant in WA.291/2020
A.Manimegalai .. Appellant in WA.293/2020

-vs-

1.The Secretary to Government,
School Education Department,
Fort St. George, Chennai 600 009.

2.The Director of Elementary Education,
Nungambakkam, Chennai 600 006.

3.The District Educational Officer,
Tiruvannamalai, Tiruvannamalai District.

4.The Block Development Officer,
Tiruvannamalai, Tiruvannamalai District.

5.The Correspondent/Secretary,
Chinnagangiyanoor, Pallikondapattu
Post, Tiruvannamalai District.
.. Respondents in both WAs.

Appeals filed under Clause 15 of the Letters Patent against the order dated 23.10.2019 passed in W.P.Nos.18010 and 18014 of 2019 on the file of this Court.

Prayer in WP.No.18010/2019: Writ petition filed under Article 226 of the constitution of India, praying to issue a writ of Mandamus, Directing the respondents to grant of interest at the rate of 12 %for belated payment of retirement benefits and pensionary benefits.

Prayer in WP.NO.18014/2019: Writ Petitions filed under Article 226 of the constitution of India, praying to issue a writ of Mandamus, Directing the respondents to grant of interest at the rate of 12 % for belated payment of retirement benefits and pensionary benefits.

For Appellants : Mr.V.Thirupathi

For Respondents : Mr.C.Munusamy
Spl. Govt. Pleader

COMMON JUDGMENT

(Delivered by The Hon'ble Chief Justice)

We have heard learned counsel for both the appellants and Sri.C.Munusamy, learned Special Government Pleader for the respondents.

2.The dispute in both the writ appeals is with regard to payment of interest on account of the delayed release and reimbursement of post retiral benefits of both the appellants.

3.The issue appears to have emerged at the time of superannuation when the appellants had not produced 'no dues certificates' in respect of certain bank loans having been taken by them. The authority empowered to process the pension papers had called upon the appellants to produce the 'no due certificate' in order to make recommendations for payment of pension by the pension payment authority. This delay, therefore, was caused on account of non-production of the 'no dues certificate' by the appellants with regard to the loans taken by them from banks, the repayment whereof was connected with their salary.

4.The appellants, aggrieved by the inaction, approached this Court by filing two writ petitions separately, being W.P.Nos.3290 of 2010 and 3291 of 2010. Both the writ petitions were allowed and the objection taken by the authorities that the appellants had not furnished their 'no dues certificate' was considered to be not an impediment in release of post retiral benefits. However, this took almost seven years in the High Court when the judgment came to be delivered on 03.08.2017. It is, thus, this delay which had occurred on account of the litigation before this

Court and its final determination that resulted in non-payment of the retiral benefits of the appellants.

5.We, however, do not find any prayer having been made by the appellants at the time of disposal of the said writ petitions for award of any interest on the said amount, the direction whereof was issued in the year 2017 after contest.

6.The learned Special Government Pleader for the State has urged that since the dispute of retiral benefits had not yet been resolved and the objection taken by the authorities in not releasing the benefits was ultimately decided in 2017, therefore, liability cannot be fastened on the State for payment of interest, as there was no deliberate default on their part.

7.On the other hand, learned counsel for the appellants contends that if the Court ultimately found that non-production of 'no dues certificate' did not disentitle the appellants from claiming their pensionary benefits, then, in that event, the amount became payable and if there was delay from the date from which they were entitled, then, in that event interest was awardable to the appellants.

8.On this issue, we do not find any such relief having been claimed in the previous round of litigation for award of interest. Learned counsel for the appellants contends that if there was any laches on the part of the counsel having not raised this issue in the previous writ petitions, that cannot be a ground to deny the payment of interest, inasmuch as the cause of action arose for award of interest only after the dispute was decided by the High Court.

9.We are of the opinion that it is correct that if there was any delay in the payment of retiral benefits, then interest was certainly payable inasmuch as it has been time and again held that pensionary benefits are not a bounty and it is savings earned by an employee. This, therefore, being within the term of property of the appellants, was certainly amenable to award of interest. We may clarify that the entitlement of interest is no longer an issue res integra and has been settled by several decisions, one of them has been relied on by learned counsel for the appellants in the case of Government of Tamil Nadu and Anr. vs. M.Deivasigamani, (2009) 3 MLJ (Vol.242) 1, which in turn has relied on the Apex Court judgment in the case of S.K.Due vs. State of Haryana, (2008) 3 SCC 44. Paragraph 6 of the Division Bench judgment of the Madras High Court is extracted hereinunder for ready reference:-

> 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.Due v. 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:
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> > "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."

This Division Bench judgment has been further followed by another Division Bench of this Court in the case of M.Suceela Bai vs. Government of Tamil Nadu and Ors., (2019) 8 MLJ 129.

10.However, the question of award of interest arose only on the determination of the issue of default on the part of the employer. In this case, we find that the employer had informed the appellants of non-production of 'no due certificate' and therefore, it cannot be said that the appellants were kept in dark about the same. The appellants did file two writ petitions before this Court and the writ Court while finally allowing the writ petitions did not issue any direction for award of interest. It was open to the appellants to have made this request in the same proceedings and ought to have claimed interest in the event they were entitled to the same on account of any such delay, as that would have also required adjudication of the default or otherwise of the parties who were contesting the matter before this Court. This having not been done, a subsequent writ petition for the said cause could not have been entertained. Learned counsel contends that this was a fresh cause of action and therefore, the cause not being connected to the earlier litigation, this relief cannot be denied. We cannot agree to this proposition for the reason that the appellants did have a cause for claim of interest when the writ petitions were being finally disposed of in the year 2017. Any slackness on the part of the counsel in not raising this plea or not demanding the same will not accrue in any benefit of the appellants nor can it create a liability on the State after ten years. We, therefore, on the facts aforesaid, cannot issue a direction to that effect and therefore, the conclusion drawn by the learned Single Judge cannot be said to be suffering from any legal or factual infirmity on that count.

11.The question of payment of interest would arise if there has been a delay after 03.08.2017, which is the date of the judgment of the learned Single Judge. To that extent, we find that the appellants would be entitled to interest from the date of the judgment of the High Court, which is 03.08.2017.

12.We, accordingly, modify the impugned judgment of the learned Single Judge dated 23.10.2019 and partly allow the writ appeals to the aforesaid extent and grant 9% simple interest to the appellants with effect from the date of the judgment of the High Court, i.e., 03.08.2017, till the date of actual payment. The respondents are directed to forthwith calculate the interest at the rate of 9% simple interest on the amount which was payable as from 03.08.2017 till the date of actual payment and release the same to the appellants within six weeks of the presentation of certified copy of this order. No costs. Consequently, C.M.P.No.4929 of 2020 is closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

sra

To

1.The Secretary to Govt.,
School Education Department,
Fort St.George, Chennai-9.

2.The Director of Elementary Education,
Nungambakkam, Chennai-6.

3.The District Educational Officer,
Thiruvannamalai, Thiruvannamalai District.

4.The Block Development Officer,
Thiruvannamalai, Thiruvannamalai District.

5.The Correspondent/Secretary,
Chinnagangiyanoor, Palliknodapattu
Post, Thiruvannamalai District.

W.A.Nos.291 and 293 of 2020

MR(CO)
CB(06/08/2020)