

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.565 of 2011

K.Sarangapani

... Petitioner

Vs.

The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai, Nandanam,
Chennai - 600 0035.

... Respondent

Prayer: Writ petition filed under Article 226 of Constitution of India praying to issue a writ of mandamus directing the Managing Director, Tamil Nadu Housing Board, the respondent herein, to pay interest to the petitioner on the belated disbursement of pay arrears in the post of Draughting Officer, Selection Grade Draughting Officer, Senior Draughting Officer, difference in pension arrears, leave arrears with effect from the date of its due till date of its disbursement at the rate of 18% compounded on the quarterly rest and disburse the arrears within a short date that may be fixed by the Court.

For Petitioner : Mr.K.Rajkumar

For Respondent : Mr.R.Bharat Kumar
Standing Counsel

सत्यमेव जयते
O R D E R

The petitioner was appointed as a Building Inspector in the respondent Tamil Nadu Housing Board (herein after referred to as Board) on 05.09.1964. Thereafter, he was promoted to the post of Draughtsman Grade on 03.01.1973. The said post of Draughtsman Grade III was later on re-designated as Junior Draughting Officer. However, he was not promoted to the next promotional post of Draughting Officer and Senior Draughting Officer, whereas his junior was promoted by relaxation of the

qualification prescribed under the rules. Since his name was not considered, the petitioner filed a writ petition in W.P.No.739 of 1997 for the following relief:-

" (i) to issue a writ of mandamus or direction or order in the nature of mandamus directing the Managing Director, Tamil Nadu Housing Board, namely, the respondent herein to promote the petitioner to the post of Senior Draughting Officer from the date on which his junior Mr.R.Raghupathy came to be promoted with all consequential service and monetary benefits.

(ii) to direct the respondent to disburse the monetary arrears due to the petitioner in the post of Draughting Officer from the date on which he was notionally promoted namely 09.05.1980 on par with his for juniors Mr.V.Karuppiyah and for consequential revision of scale in the higher cadre;

(iii) to confer selection grade in the post of Draughting Officer to the petitioner from 09.05.1980 and consequently revise the pension of the petitioner on the basis of the revision of pay ordered above and disburse all the arrears including the Special Provident Fund and the revised Gratuity at the rate of 97% from the date of its due with interest at the rate of 24% on the belated arrears on the above counts."

2. However, the respondent has paid a selection Grade scale of pay and therefore, he had given up his prayer insofar as the grant of selection grade is concerned. Accordingly, the following order came to be passed:-

"I hold that the petitioner is also entitled to monetary benefits applicable to the post of Draughtsman from the date when the petitioner has been promoted, namely 09.05.1980 for the purpose of pensionary benefits. The petitioner is also entitled to pensionary benefits on the ground that the petitioner is entitled to all monetary benefits applicable to the post of Draughtsman when his juniors were promoted on 09.05.1980 and one of his juniors by name Raghupathi was promoted as Senior Draughting Officer on 05.12.1994."

3. Accordingly, the petitioner was granted the relief of notional promotion to the post of Draughtsman and Senior Draughting Officer and it was declared that he is entitled to all monetary benefits and also the pensionary benefits. The respondent preferred an appeal in W.A.No.2642 of 2002 and the same was dismissed on 04.11.2006 and the SLP filed before the

Hon'ble Supreme Court in SLP(Civil).No.13142 of 2007 dated 11.09.2009 was also dismissed. Thereafter, the respondent has settled the arrears of pay, due to the petitioner by quantifying the same at Rs.73,000/-. However, the interest for delayed payment was not given, hence, the petitioner made a representation for grant of interest for delayed payment as well as for encashment of surrender leave as on 31.05.2010. Since the respondent has not complied with his request, the petitioner issued a legal notice on 11.11.2010, but in vain. Aggrieved over the inaction in respect of receiving the legal notice, the petitioner preferred the above writ petition for a direction to pay interest on the belated disbursement of pay arrears, difference in pension arrears, leave arrears at the rate of 18% compound interest.

4. Denying the claim of the petitioner, the respondent has filed a detailed counter. The learned counsel appearing for the respondent / Board would contend that the writ Court while passing orders has categorically mentioned that third prayer in the writ petition with regard to interest was given up by the respondent and therefore, he is not entitled to claim any interest at this stage. He would contend that as per the judgment of the Hon'ble Supreme Court reported in JT 1996 (8) 1998 in the case of Commissioner of Income Tax, Bombay Vs. T.P.Kumaran, wherein the Hon'ble Supreme Court has held as under:-

"The Tribunal has committed a gross error of law in directing the payment. The claim is barred by constructive res judicata under Section 11, Explanation IV, CPC which envisages that any matter which might and ought to have been made ground of defence or attack in a former suit, shall be deemed to have been a matter directly and substantially in issue in a subsequent suit. Hence when the claim was made on earlier occasion, he should have or might have sought and secured decree for interest. He did not set and, therefore, it operates as res judicata. Even otherwise, when he filed a suit and specifically did not claim the same, Order 2, Rule 2, CPC prohibits the petitioner to seek the remedy separately. In either event, the OA is not sustainable."

5. According to the learned counsel when the claim was made on previous occasion and not granted, the petitioner is not entitled to file another writ petition for the same cause of action.

6. On the other hand, the learned counsel for the petitioner would rely on the judgment of the Hon'ble Supreme Court reported in 2009 (9) SCC 92 [Vijay Narayan Thatte and others Vs. State of Maharashtra and others], by which he would submit that there would not be estoppel against statute.

7. Rule 45 (A) of the TamilNadu Pension Rules:

"45-A. Interest on delayed payment of gratuity:

(1) Interest at the rate of eight percent 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 percent per annum beyond a period of three months and upto one year; and

(b) ten percent per annum beyond a period of one year:

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

Provident also that on and from 1st April 2004, the rate of such interest such 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."

Therefore, he would submit that as the above Rule on the belated payment of the provident fund, the Government servant is entitled to 12% per annum (compounded annually). Thus, the petitioner is also entitled to the interest.

8. I heard the submission made by both the parties.

9. Admitted facts remains that this Court has allowed the writ petition in respect of prayer 1 and 2. The notional promotion to the post of Draughtsman with effect from 09.05.1980 and for the post of Senior Draughtsman with effect from 05.12.1994 . The respondent ought to have given the benefit to the petitioner when the order was passed by the writ Court on 29.01.2002. A specific direction was given to disburse the monetary benefits with effect from the above said dates, whereas the respondent has filed a Writ Appeal and SLP which were finally disposed on 11.09.2009. Therefore, it should be construed that the delay had occasioned on account of the subsequent acts of challenge to order by the respondent atleast from 2002 - 2009. Now, that they again take shelter under the

order passed by the writ Court in respect of the 3rd prayer. A composite reading of the order goes to show that the 3rd prayer was withdrawn only with regard to grant of selection grade scale of pay and not in respect of payment of interest. Even otherwise on the belated payment, the Government servant is entitled to interest as held by various judgments. It cannot be held that it is barred by resjudicata, for, no person can waive his right as rightly contended by the learned counsel for the petitioner, when the statutory provision specifically provided with interest at the rate of 12% per annum of the interest compounded annually, the same cannot be taken away under pretext of estoppel . Therefore, I am of the considered opinion that the petitioner is entitled to interest as the cause of action arise only after receiving the payment without interest. When such payment was made without interest, the petitioner is entitled to raise the claim for interest from the date of receipt of the settlement. Therefore, it is not belated.

10. Hence, I am of the considered opinion, the petitioner is entitled to payment of interest at the rate of 12% per annum (compounded annually) from the date of notional benefit as ordered by the writ Court within a period of twelve weeks from the date of receipt of a copy of this order.

The writ petition is ordered accordingly. No costs.

Sd/-

Assistant Registrar (C.S.III)

/True Copy/

Sub Assistant Registrar

To

The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai, Nandanam,
Chennai - 600 0035.

+1 cc to M/s.R.Bharath Kumar, Advocate Sr.No. 17902

+1 cc to M/s.K.Rajkumar, Advocate Sr.No. 16642

AKM/18.03.2020/5P-4C /

WEB COPY

W.P.No.565 of 2011