In the High Court of Judicature at Madras

Dated : 11.3.2020

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.544 of 2012

K.R.Sundra Mahalingam ...Petitioner

Vs

1.The Commissioner, Corporation of Chennai, Ripon Buildings, Chennai-600 003.

2.The Zonal Officer, formerly Zone V, now newly Zone VIII, Corporation of Chennai, No.183, EVR Periyar Road, Kilpauk, Chennai-600 010.

3.The Assistant Health Officer, formerly Zone V, now newly Zone VIII, Corporation of Chennai, No.183, EVR Periyar Road, Kilpauk, Chennai-600 010.

4.The Accounts Officer (Pension), Corporation of Chennai, Ripon Buildings, Chennai-600 003. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 11.7.2011 passed by the 2nd respondent vide his letter Ma.A.5/Na.Ka.No.H1/3611/2008, quash the same and consequently direct the respondents to pay interest at the rate of 10% from 30.4.2004 to 13.9.2010 to the delayed payment of retirement benefits of Rs.54,347/- to the petitioner.

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For Petitioner : Mr.A.Srinivasan

For Respondents: Mr.M.Ganeshan
Standing Counsel

ORDER

I have heard Mr.A.Srinivasan, learned counsel for the petitioner and Mr.A.Ganeshan, learned Standing Counsel appearing for the respondents.

2. The petitioner, who was working as a sanitary inspector in the respondent - Corporation, attained the age of superannuation on 30.4.2004 and was permitted to retire pursuant to proceedings issued on 27.4.2004. At the time of retirement, the petitioner was paid a sum of Rs.2,17,388/- towards gratuity and Rs.4,190/- towards pension including the dearness allowance and after commutation of 1/3rd pension i.e. Rs.1,396/-, his monthly pension was fixed at Rs.2,794/- by calculating his entire service as 39 years, 2 months and 4 days. Further, a sum of Rs.16,440/- was deducted towards housing loan and a sum of Rs.54,347/- was retained towards 25% of the retirement benefits on the ground that audit objections were pending.

3. The petitioner received the aforesaid amounts and was permitted to retire. Thereafter, the petitioner submitted representations for release of the withheld amount stating that there was no charge framed against the petitioner and that he having been allowed to retire, it would be unfair on the part of the respondent - Corporation to retain 25% of his retirement benefits.

4. On 13.9.2006, the petitioner executed an affidavit of undertaking in Rs.20/- non judicial stamp paper for release of 25% of the withheld amount stating that if the audit objections are confirmed, the amount paid to him can be recovered from the pension amount. In spite of such a undertaking given by the petitioner, the first respondent did not release the 25% withheld amount. After about two years, by communication dated 07.11.2008, the petitioner was directed to file an affidavit of undertaking in the form of surety bond and a format was enclosed along with the said communication.

5. Aggrieved by the said communication dated 07.11.2008, earlier, the petitioner filed W.P.No.28324 of 2008 to direct respondents 1 to 3 to disburse 25% of the withheld amount. The said writ petition was disposed of on 05.3.2010 by issuing a

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positive direction to release the withheld amount on execution of the surety bond by the petitioner and enquire into the explanation given by the petitioner with regard to the audit objections. It was only on 03.8.2010, an order was passed by the first respondent for disbursal of the withheld amount and the same was disbursed and paid to the petitioner on 13.9.2010. The petitioner is now claiming interest in terms of Rule 45A of the Tamil Nadu Pension Rules, 1978 at the rate of 10% per annum payable on the Death cum Retirement Gratuity (DCRG) beyond the period of one year on the ground that the respondents, who paid the retirement benefits after six years, are liable to pay interest.

6. It is submitted by the learned counsel for the petitioner that though the petitioner submitted an affidavit of undertaking as early as 13.9.2006, after about two years, once again the petitioner was directed to file a surety bond by letter dated 07.11.2008 and that the attitude of the respondents needs to be taken into consideration and it has to be held that the petitioner has been dealt with in a most unfair manner.

7. The third respondent filed a counter affidavit, the contents of which were reiterated by the learned Standing Counsel for the respondents. Firstly, it is the submission of the learned Standing Counsel for the respondents that in the earlier writ petition, the petitioner did not pray for any interest, that therefore, the petitioner could not make such a claim in the present writ petition and that he is estopped from doing so. It is further submitted that there was no direction in the earlier writ petition to pay interest and that the petitioner could not take advantage of his own lapse and claim interest alleging that there was belated release of the withheld amount. It is also submitted that letters were sent to the petitioner on 15.4.2010, 25.5.2010 and 09.6.2010 to execute a surety bond as per the directions of this Court in the earlier writ petition, but he did not execute the same and in spite of that, the respondent - Corporation complied with the order passed in the earlier writ petition and sanctioned the amount of Rs.54,347/- on 13.9.2010. Thus, it is submitted that the delay is attributable to the petitioner and that no interest is payable.

8. The claim for interest made by the petitioner is a statutory claim. In terms of Rule 45A of the Pension Rules, interest at the specified rate is payable on DCRG paid beyond the period stipulated in various Clauses under Sub-Rule (1). On a perusal of the said Rule, it is seen that there are various periods fixed, for which, interest is payable. It is relevant to

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note that even in cases were disciplinary action is initiated against the Government servant and ultimately if he is exonerated of the charges, if the DCRG is not paid within the time stipulated in the said Rules, the retired employee is entitled for interest. The case on hand is not a case where any disciplinary action was initiated against the petitioner. He was permitted to retire on 30.4.2004 and all pensionary benefits were disbursed except the withheld amount of Rs.54,347/-.

9. The respondents would state that the surety bond, as directed by this Court in the earlier writ petition, was not furnished.

10. But, the fact that the petitioner had given an undertaking in Rs.20/- non judicial stamp paper on 13.9.2006 is not denied. Further, the third respondent, in the counter affidavit, would state that it is not in the proper format. What is important is the contents of the bond/affidavit of undertaking than the format. The contents will prevail over the format. Therefore, the approach of the respondent - Corporation is hyper technical and ultimately, the disbursal has been effected only on 13.9.2010 well beyond the time fixed by this Court in the earlier writ petition.

11. It is not clear from the counter as to whether the audit objections had been finalised or not. In any event, it will be too harsh if the respondents initiate any action against the audit objections. Therefore, this Court holds that the proceedings initiated pursuant to the audit objections shall stand abated and cannot be proceeded further. Taking note of the overall facts and circumstances of the case, this Court is constrained to fix the rate of interest at 8% and also the period, for which, the petitioner is entitled to interest though the petitioner claims interest for about six years. Further, taking note of the facts and more particularly the affidavit of undertaking given by the petitioner on 13.9.2006, which, in the considered view of this Court, ought to have been accepted, the withheld amount should have been released within a reasonable time and at least by 30.9.2006. Having not done so and the money having been disbursed only on 13.9.2010, this Court is of the view that the petitioner is entitled to interest at 8% per annum from October 2006 till 13.9.2010.

12. Accordingly, the impugned order is quashed and the writ petition is allowed to the extent that the petitioner is entitled to interest at 8% per annum for the delayed payment of Rs.54,347/- from October 2006 till 13.9.2010. The interest shall be computed and paid to the petitioner by way of NEFT or demand

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draft within a period of 12 weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

RS

To

1.The Commissioner, Corporation of Chennai,
Ripon Buildings, Chennai-3.

2.The Zonal Officer, formerly Zone V,
now newly Zone VIII, Corporation of
Chennai, No.183, EVR Periyar Road,
Kilpauk, Chennai-10.

3.The Assistant Health Officer,
formerly Zone V, now newly Zone VIII,
Corporation of Chennai, No.183,
EVR Periyar Road, Kilpauk, Chennai-10.

4.The Accounts Officer (Pension),
Corporation of Chennai,
Ripon Buildings, Chennai-3.

+1cc to Mr.A.Srinivasan, Advocate SR.21400
+1cc to Mr.M.Ganesan, Advocate SR.21549

WP.No.544 of 2012

KS(CO)
CB(19/06/2020)

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