



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2020

CORAM:

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD) No.2994 of 2020

G.Arunachalam

... Petitioner

Vs.

- 1.The Principal Secretary and
Director of Treasuries and Accounts,
Saidapet,
Chennai - 600 015.
- 2.The Principal Secretary to Government,
Health and Family Welfare (Z-2) Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
- 3.The Additional Chief Secretary to Government,
Finance Department (Treasuries and Accounts),
Secretariat,
Fort St. George,
Chennai - 600 009.
- 4.The Director of Medical and Rural Health Services
(ESI), DMS Complex,
Teynampet,
Chennai - 600 006.
- 5.The Accountant General,
Accountant General Office,
261, Anna Salai,
Chennai - 600 018.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 2nd respondent in Letter No.9969/Z2/2019-5, dated 07.11.2019 and quash the same and consequently direct the respondents 1 to 5 to pay 12% interest per annum for the belated sanctioned amount under the head of encashment of Earn Leave and Leave on Private Affairs, Special Provident Fund and Commutation of Pension from 01.08.2016 to till the date of disbursement based on the petitioner's representation dated



22.06.2018 and subsequent representation dated 14.03.2019 within a stipulated time.

For petitioner

: Mr.R.Karunanidhi

For respondents 1 to 4

: Mr.K.Mu.Muthu,
Additional Government Pleader

For 5th respondent

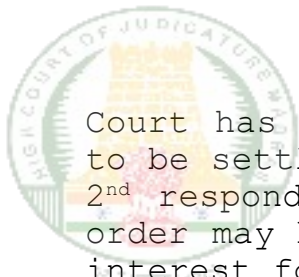
: Mr.P.Gunasekaran

ORDER

By consent of both the parties, this writ petition is taken up for final disposal at the stage of admission itself.

2. The learned counsel for the petitioner submitted that on 10.05.1983 the petitioner had joined as Typist in Taluk Project Nutrition Office, Kamuthi and after serving various cadres, he attained the age of superannuation on 31.07.2016. But, before the date of retirement ie., on 30.07.2016 the third respondent placed the petitioner under suspension and not permitted him to retire from service on 31.07.2016. After full-fledged enquiry, by order dated 22.01.2018, the petitioner was exonerated from the charges and he was permitted to retire from service. Due to pendency of disciplinary proceedings, the petitioner received Commutation of Pension, Special Provident Fund, encashment of Earned Leave and Leave on private affairs, DCRG, etc. belatedly. As per the provisions of Rule 45-A of the Tamil Nadu Pension Rules, the petitioner is entitled to get interest for the belated payment. In this regard, the petitioner has submitted a representation dated 22.06.2018 to the respondents. But, the 2nd respondent, by order dated 18.12.2018, has granted interest for some of the heads without considering the said representation. The interest for the other heads ie., encashment of leave, Special Provident Fund and Commutation of pension, have not been given by the respondents. Hence, the petitioner has sent various representations to the respondents in this regard. As there was no response to the same, the petitioner had filed a writ petition in W.P.(MD).No.7024 of 2019 seeking a direction to the respondents to consider the said representations and this Court, by order dated 26.03.2019, directed the respondents to consider the representations of the petitioner within a period of eight weeks. Subsequently, the 2nd respondent has passed the impugned order rejecting the claim of the petitioner. Challenging the said order, the petitioner has filed this writ petition.

3. The learned counsel for the petitioner would further submit that as the delay in payment of above retirement benefits has been caused only by the respondents, the respondents ought to have paid interest for the belated payment. In a catena of judgment, this



Court has held that the belated payment of retirement benefits has to be settled with interest. But, without considering the same, the 2nd respondent has passed the impugned order. Hence, the impugned order may be set aside and the respondents may be directed to give interest for the belated payment of above retirement benefits.

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4. The learned counsel appearing for the respondents submitted that the eligible interest has already been paid to the petitioner for DCRG and for the belated payment of other heads, no interest has been paid. As the disciplinary proceeding was pending and it is only an option to an employee to apply for commuted value of pension, the petitioner is not entitled to get interest for the Commutation of Pension. Thus, he prayed to dismiss the writ petition.

5. When the similar issue arises for consideration, a learned Single Judge of this Court in the case of **P.V.Mahadevan Vs. The Secretary to Government, Housing and Urban Development Department, Chennai and another**, reported in **2011 (2) CWC 40**, cited supra, after referring to the decisions of the Hon'ble Apex Court as well as this Court, has held as follows:

"8. Before proceeding to consider the core question involved in this matter to the effect that whether the petitioner is entitled to seek the relief of interest for the delayed payment of retiral benefits, it is relevant to state the status of the petitioner after the charge memo issued against him was quashed by the Hon'ble Apex Court.

9. It is well-settled that once a disciplinary proceedings or charge memo was quashed by a Court of law, the said delinquent officer is deemed to have been in his original position. At this juncture, it is relevant to refer the Division Bench decision of this Court in **The Secretary, Vallalar Gurukulam Higher Secondary School Vs. District Educational Officer, Cuddalore** reported in **2005 (4) CTC 7**, wherein, the Division Bench has held as hereunder :

"6. Once a person is acquitted in a criminal case, it has to be deemed that he never committed that offence. This is because every judgment operates retrospectively unless expressly made prospectively, unlike a legislation which normally operates prospectively unlike expressly made retrospectively."

10. The Hon'ble Apex Court in **Devendra Pratap Narain Rai Sharma Vs. State of U.P.** reported in **AIR 1962 SC 1334** has held as hereunder :



"11. But in this case the order of dismissal was declared invalid in a civil suit. The effect of the decree of the civil suit was that the appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. The effect of the adjudication of the civil courts is to declare that the appellant had been wrongfully prevented from attending to his duties as a public servant."

11. Therefore, the principles laid down by the Division Bench of this Court and the Hon'ble Apex Court make it crystal clear that once the charge memo issued against a delinquent officer is quashed or once the dismissal order passed against the public servant was declared invalid in a civil proceedings, the delinquent officer is deemed to have been in service continuously not facing any delinquency. The said principle is squarely applicable to the facts of the instant case as in this case also the Hon'ble Apex Court has quashed the charge memo issued against the petitioner and as such, he is deemed to have been in service without any departmental proceedings on the date of his retirement, i.e., on 28.02.2002. In view of the above said reasons, this Court has no hesitation to hold that the petitioner cannot be deprived or denied his right to claim interest for the delayed payment of retiral benefits on the ground of pendency of disciplinary proceedings pending against him earlier.

12. Now coming to the main question involved in the matter, viz., the entitlement of the petitioner to seek the relief of interest for the delayed payment of retiral benefits, it is relevant to refer the impugned order. A perusal of the impugned order issued by the second respondent dated 22.09.2006 reveals that the relief sought for by the petitioner was denied mainly on the ground of pendency of the disciplinary proceedings against the petitioner and on the basis of the Government Order in G.O.Ms.No.527 to the effect that no interest shall be payable in cases where the delay in the payment of Death-cum-Retirement Gratuity is due to the institution of departmental or judicial proceedings. It is needless to state that such a Government Order cannot have a statutory force.

13. On the other hand, there is a specific rule available in the Tamil Nadu Pension Rules, 1978 as



per Rule 45(1-A) of the Rules which reads hereunder :

"45-A. Interest on delayed payment of gratuity (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 ;"

A reading of the above said provision makes it abundantly clear that a Government servant is entitled to seek the relief of interest in respect of the delayed payment of Death-cum-Retirement Gratuity three months from the date of retirement.

14. The learned Standing Counsel for the second respondent placed reliance on the second proviso to Rule 45-A(1) which reads hereunder :

"Provided further that no such interest shall be payable, -

(a) where the institution of departmental or judicial proceeding against the retiring Government servant concerned is pending ; ..."

A reading of the above said proviso makes it abundantly clear that no interest shall be payable only where the institution of departmental or judicial proceeding against the retiring Government servant is pending. Therefore, the said provision is applicable to the government servant against whom the disciplinary proceedings is pending at the time of retirement.

15. As far as the case of the petitioner is concerned, admittedly he is standing on a different footing. As already pointed out, once the charge memo issued against him has been quashed by the Honble Apex Court, the petitioner is continuously deemed to have been in service even at the time of retirement on 28.02.2002. Therefore, I am unable to countenance with the above said contention of the learned counsel for the second respondent.



16. This Court is also constrained to state that the above said statutory rules are available under the Tamil Nadu Pension Rules as far as Death-cum-Retirement Gratuity is concerned. It is needless to state that interest claimed by the petitioner in respect of other benefits, viz., Commutation of Pension, Encashment of Earned Leave, Provident Fund, Special Provident Fund, Fifth Pay Commission arrears, Pension Arrears, Incremental arrears, etc., has to be considered by the authorities concerned in the light of the principle laid down by the Hon'ble Apex Court in a catena of decisions.

17. At this juncture, it is relevant to refer the decision of the Honble Apex Court in **S.K.Dua Vs. State of Haryana reported in 2008 (3) SCC 44.** The Honble Apex Court in the said decision has held as hereunder :

"14. In the, 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 circumstances on that basis. But even in 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."

18. The above said principle laid down by the Honble Apex Court is also followed by a Division Bench of this Court in Government of Tamil Nadu Vs. M.Deivasigamani reported in 2009 (3) M.L.J. 1, wherein, the Division Bench has held as hereunder :

"7.... An employee is entitled to claim interest on belated payment of pension and other retrial benefits, even in the absence of statutory rules/administrative instructions or guidelines and he can make his claim for interest, under Part III of the Constitution of India relying on Articles 14, 19 and 21 of the Constitution of India

19. In view of the principles laid down by the Honble Apex Court and the Division Bench of this Court, this Court has no hesitation to hold that



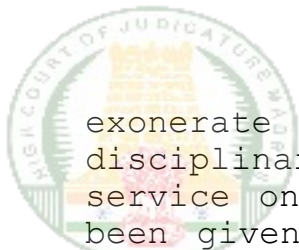
the petitioner is entitled to seek the relief of interest.

20. Let me now consider the rate of interest for which, the petitioner is entitled to seek for the belated disbursement of the retrial benefits. The petitioner has claimed interest of 18% p.a., for such delay caused on the part of the second respondent herein. It is pertinent to note that even in respect of one of the retirement benefits, viz., 'encashment of leave on private affairs', the petitioner has to approach this Court by filing a writ petition in W.P.No.582 of 2009 and this Court passed an order dated 30.09.2009 directing the very same second respondent herein to grant the relief of interest at the rate of 18% per annum from the date of retirement, i.e., from 28.02.2002 till the date of payment, i.e., on 09.09.2009 and further directed that the said interest shall be paid within twelve weeks from the date of receipt of a copy of that order. It is also brought to the notice of this Court that the said order of this Court was complied with by paying 18% interest for such delayed disbursement in payment. Therefore, it is very clear that the rate of interest fixed by this Court is binding on the second respondent even in respect of interest claimed by the petitioner for other benefits. The said order of this Court passed by the learned Single Judge, as stated above, has also reached finality as the same was not challenged by the second respondent and the same was complied with.

21. In view of the aforesaid reasons, this Court is constrained to set aside the impugned order and accordingly, the impugned order dated 22.09.2006 passed by the second respondent herein in Letter No.PT-1/10265/2001 is hereby set aside. Consequently, the second respondent herein is directed to pay interest at the rate of 18% per annum for the delayed disbursement of retrial to the petitioner. It is made clear that the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this Order."

(emphasis supplied)

6. The above decision is squarely applicable to this case. In this case, the petitioner was suspended on 30.07.2016 ie., one day before the date of his superannuation. It is stated that on 10.08.2016, the Enquiry Officer filed a report recommending to



exonerate the petitioner from the disciplinary proceedings. The disciplinary authority permitted the petitioner to retire from service only on 22.01.2018. In the meantime, the petitioner have been given DCRG with interest. The respondents have not explained the delay in dealing with the disciplinary proceeding. When the delay is on the part of the respondents, they cannot deny to provide interest for the belated payment of retirement benefits. More over, once the charge memo issued against the petitioner has been revoked, he is continuously deemed to have been in service till the date of his retirement and he cannot be deprived or denied his right to claim interest for the delayed payment of retirement benefits on the ground of pendency of disciplinary proceedings. Hence, this Court is inclined to set aside the impugned order.

7. It is stated by the respondents that the claim of commuted value of Pension is an optional one to the employees and it can be considered only on the date of application after retiring from service and that it cannot be considered during the pendency of the disciplinary proceeding and hence, the question of interest for the same does not arise. As stated earlier, as the disciplinary proceeding has been revoked, it is deemed to be taken that the petitioner retired from service on the date of his retirement from service. If the petitioner retired on the date of his superannuation, he would have given his option early for commuted value of pension. Further, in this case, the delay in completion of the disciplinary proceeding is on the part of the respondents and hence, this Court is not inclined to accept the above submission of the respondents. It is seen that the petitioner has claimed only 12% of interest, which is a reasonable one.

8. In view of the above, the impugned order dated 07.11.2019 passed by the second respondent is set aside and the respondents are directed to pay interest at the rate of 12% p.a. for the belated sanction amount under the head of encashment of Earned Leave, Leave on Private Affairs, Special Provident Fund and Commutation of Pension from 01.08.2016 to till the date of actual payment, within a period of twelve weeks from the date of receipt of a copy of this order.

9. This Writ Petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)



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Director of Treasuries and Accounts,
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+1 CC to M/s.R.KARUNANITHI, Advocate (SR-9507[F] dated 02/03/2020)

+1 CC to M/s.SPL GP (SR-9772[F] dated 03/03/2020)

+1 CC to M/s.P.GUNASEKARAN, Advocate (SR-9988[F] dated 04/03/2020)

Order made in
W.P.(MD) No.2994 of 2020

02.03.2020

NR(29.05.2020) 9P 9C