

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.957 of 2021

Dr.D.S.Manohar

... Petitioner

-vs-

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai 600 009.
2. The Director of Medical Education,
Chennai 600 010.
3. The Dean,
Chengalpattu Medical College,
Chengalpattu.
4. The Dean,
Madras Medical College,
Chennai 600 003.
5. The Accountant General,
Chennai 600 018.

... Respondents

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the Respondents to pay all the terminal benefits including Gratuity as well as the regular pensionary benefits with effect from 31.05.2010 together with interest at 12% per annum.

For Petitioner : Mr.P.Arumugarajan
For Respondents : Mr.S.Karthikeibalan,
R1 to R4 Government Advocate

ORDER

Petitioner herein, who retired from the services of the Respondent on 31.05.2010, on reaching the age of superannuation, has come up with the above Writ Petition seeking a direction to the Respondents to pay all the terminal benefits including

gratuity as well as the regular pensionary benefits with effect from 31.05.2010, together with interest at 12% per annum.

2. Heard the learned counsel on either side and perused the material documents available on record.

3. It is an accepted position of law that, Gratuity and pension are not bounties. The concern expressed by the Hon'ble Supreme Court that, retirement dues must be paid in time, is reflected in the case of Dr.Uma Agarwal vs. State of U.P., reported in (1999) 3 SCC 438, relevant portion of which, reads as under:

"5. We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps at least two years in advance of the date of retirement. If the Rules/instructions are followed strictly, much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. The Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the court can certainly keep in mind the time-schedule prescribed in the Rules/instructions apart from other relevant factors applicable to each case."

4. To understand the need for timely payment of retirement dues, it is appropriate to consider the time limit prescribed under Section 4 of the Payment of Gratuity Act, 1972, which reads as under:

"4.Payment of gratuity:

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease;

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to the heirs.

Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement. "

5. Rule 45-A of the Tamil Nadu Pension Rules, 1978 provides that, interest shall be payable on the belated payment beyond a period of two months from the date of retirement of a Government Servant.

6. A Division Bench of this Court in the case of Government of Tamil Nadu vs. M.Deivasigamani, reported in 2009 (3) MLJ 01, has held that, an employee is entitled to interest on belated payment of pension and other retiral benefits, even in the absence of statutory rules/administrative instructions or guidelines and that, he can claim interest under Part III of the Constitution of India, relying on Articles 14, 19 and 21 of the Constitution of India.

7. In similar circumstances, the First Bench of this Court has rendered a judgment dated 12.06.2015 in W.A.(MD) Nos.383 to 457 of 2015, issuing direction to the Transport Corporation to settle the terminal benefits of its employees in equal monthly instalments and to pay 6% interest on the terminal benefits payable to the employees.

8. Therefore, from the above decision, it is amply clear that, belated payment of retirement benefits attract interest, which is to be paid by the employer, beyond the period prescribed by the statutory Rules.

9. Coming to the case on hand, learned Government Advocate appearing for the Respondents submitted that, the Petitioner was facing departmental proceedings, for which, punishment of cut of pension of Rs.200/- per month for a period

of one year, was imposed vide G.O.(D) No.54, dated 13.01.2012 and thereafter, terminal benefits due to the Petitioner have not been paid. He further submitted that, by proceedings dated 05.03.2021 of the 3rd Respondent herein, annual increments have been sanctioned to the Petitioner. He went on to state that, consequential order has also been issued on 24.03.2021 and that, the Petitioner would be getting all the benefits, based on the proceedings dated 05.03.2021.

10. Thus, in view of the above and following the judgments passed by the Division Bench of this Court, this Court feels it appropriate to issue the following directions:

(i) Respondent is directed to settle all the terminal benefits due to the Petitioner within a period of two months from the date of receipt of a copy of this order;

(ii) Respondent is directed to pay interest @ 6% per annum to the Petitioner for the belated payment of gratuity, leave salary and commutation of pension amount that are yet to be settled, in six equal monthly instalments, commencing 01.04.2021. It is made clear that, the Official, who is responsible for not disbursing the terminal benefits due to the Petitioner will have to pay the interest portion to the Respondent and the same shall be recovered from his/her salary.

11. It is made clear that, the aforesaid direction to pay interest for the belated payment of terminal benefits will not preclude the employees to question the computation of any of the terminal benefits, if the same is paid less than the amount to which, he/she is entitled to receive and the retired employees will be entitled to claim interest on the same at the rates, as held by the Division Bench of this Court (supra).

The Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai 600 009.
2. The Director of Medical Education,
Chennai 600 010.
3. The Dean,
Chengalpattu Medical College,
Chengalpattu.
4. The Dean,
Madras Medical College,
Chennai 600 003.
5. The Accountant General,
Chennai 600 018.

+1cc to Government Pleader Sr.No.19373

PMK(CO)
NR 16/04/2021

Order in
W.P.No.957 of 2021



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