IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.5041, 5046 & 5048 of 2021

J.Muralikrishnan ... Petitioner in W.P.No.5041 of 2021
E.Ramanujam ... Petitioner in W.P.No.5046 of 2021
B.Krishnamurthy ... Petitioner in W.P.No.5048 of 2021

-vs-

1. The Management of
Tamil Nadu State Transport Corporation (Kovai) Ltd.,
Erode Region,
rep. By its Managing Director,
Erode.

2. The Administrator,
Tamil Nadu State Transport Employees'
Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai, Chennai - 600 002. ... Respondents in all W.Ps.

W.P.No.5041 of 2021: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the Respondents to pay interest at the rate of 18% per annum, for the period of delay from 01.06.2019 to 24.01.2021, in paying the amounts paid towards the terminal and pension benefits of the Petitioner, namely EPF Employees' Contribution, Gratuity, Encashment of Earned/Sick Leaves and Commutated Value of Pension, within a time frame.

W.P.No.5046 of 2021: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the Respondents to pay interest at the rate of 18% per annum, for the period of delay from 01.11.2019 to 24.01.2021 in paying the amounts paid towards the terminal and pension benefits of the Petitioner, namely EPF Employees' Contribution, Gratuity, Encashment of Earned/Sick Leaves and Commutated Value of Pension, within a time frame.

W.P.No.5048 of 2021: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the Respondents to pay interest at the rate of 18% per annum, for the period of delay from 01.01.2020 to

24.01.2021, in paying the amounts paid towards the terminal and pension benefits of the Petitioner, namely EPF Employees' Contribution, Gratuity, Encashment of Earned/Sick Leaves and Commutated Value of Pension, within a time frame.

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For Petitioner(s) in all W.Ps. :Mr.V.Ajoy Khose

For Respondents in all W.Ps. :Mr.A.Sundaravadhanan

COMMON ORDER

Petitioners herein, who retired from the services of the Respondent Corporation on reaching the age of superannuation, have come up with the above Writ Petitions seeking a direction to the Respondents to pay interest for the belated payment of retirement benefits at 18% per annum.

2. As the issue involved in the above Writ Petitions is one and the same, cases are taken up for disposal by a common order.

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

4. 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."

5. 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.

(2) to (6) ...."

6. 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.

7. 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.

8. 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.

9. 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.

10. Coming to the cases on hand, learned counsel appearing for the Respondents submitted that, the Respondents have to satisfy the present working class as well as the retired employees with the meagre amount allotted by the Government, on account of shortage of funds and therefore, this Court may consider imposing a lesser rate of interest on belated payment of retirement dues.

11. Taking note of the said submission and considering the fact that, the entire world is shaken by the sudden impact of COVID-19 pandemic and that, there is financial crisis all over the world, this Court has to see the balance of convenience of the parties in the interest of justice, as such abnoxious situation did not prevail when the aforesaid judgment was passed by the Hon'ble Division Bench of this Court.

12. 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) Respondents are directed to pay interest @ 4% per annum to the Petitioner(s) 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 01.05.2021;
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> (ii) In case of delay in making instalments within the time stipulated supra, with reference to the judgment of the Division

Bench of this Court (supra), interest payable for the period of delay shall be at 6% per annum.

13. 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).

These Writ Petitions are disposed of accordingly. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Managing Director,
   Management of
   Tamil Nadu State Transport Corporation (Kovai) Ltd.,
   Erode Region, Erode.

2. The Administrator,
   Tamil Nadu State Transport Employees'
   Pension Fund Trust,
   Thiruvalluvar Illam,
   Anna Salai, Chennai - 600 002.

+3 cc to MR.V.Ajoy Khose,Advocate Sr No.17062

Common Order in
W.P.Nos.5041, 5046 & 5048 of 2021
17.03.2021

PMK(CO)
RG.28.04.2021(5P/6C)