

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6233 of 2021

V.Poongodi

... Petitioner

-vs-

The Management of  
Tamilnadu State Transport Corporation (Kovai) Ltd,  
Coimbatore Regions,  
Rep. By its Managing Director,  
Coimbatore.

... Respondent

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent to pay the petitioner the amount payable towards the encashment of 60 days of earned leaves, surrendered by her husband R.Velusamy, Staff No.95CR1017349, in the years before his death as admitted by the respondent, either based on his monthly wages of the respective months of surrender of those earned leaves, together with 18% interest p.a. from the respective due dates or based on the monthly wages payable on the month of his death i.e August, 2014, together with 18% interest from the date of his death i.e 01.08.2014, within a time frame as may be fixed by this Court.

For Petitioner : Mr.V.Ajoy Khose

For Respondent : Mr.A.Sundaravadanan,  
Standing Counsel

O R D E R

The petitioner herein who is the wife of the employee, who died in middle of his service in the Respondent Corporation, has come up with the above Writ Petition seeking a direction to the respondent to pay the petitioner, the encashment of 60 days of earned leaves, surrendered by her husband R.Velusamy, Staff No.95CR1017349, either based on his monthly wages of the respective months of surrender of those earned leaves, together with 18% interest p.a. from the respective due dates or based on

the monthly wages payable on the month of his death i.e August, 2014, together with 18% interest from the date of his death i.e 01.08.2014, within a time frame as may be fixed by this Court.

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.

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

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 cases on hand, learned Standing Counsel appearing for the Respondent submitted that, the Respondent Corporation has 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.

10. 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.

11. 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 the entire amount, due to the Petitioner after adjusting the amount already paid to her, if any, on or before 30.06.2021;

(ii) Respondent is directed to pay interest @ 4% per annum to the Petitioner for the belated payment of the amount due that are yet to be settled, in three equal monthly instalments, commencing 01.05.2021;

(iii) 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.

12. 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/-  
Asst.Registrar (CS I )

/true copy/  
Sub Asst. Registrar

vum

To:

The Management of  
Tamilnadu State Transport Corporation (Kovai) Ltd,  
Coimbatore Regions,  
Rep. By its Managing Director,  
Coimbatore.

+1 cc to M/s.A.Sundaravadhanan Advocate sr15526  
+1 cc to Mr.V.Ajoy Khose Advocate sr15539 (16.04.2021)  
W.P.No.6233 of 2021

sr-II(co)  
aa09/04/2021