

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.6443, 6451, 6453 & 6456 of 2021

S.Marimuthu	... Petitioner in W.P.No.6443 of 2021
G.Chandrasekaran	... Petitioner in W.P.No.6451 of 2021
A.Sivasamy	... Petitioner in W.P.No.6453 of 2021
P.Kanagaraj	... Petitioner in W.P.No.6456 of 2021

-vs-

The Management of
Tamilnadu State Transport Corporation (Kovai) Ltd.,
Coimbatore Region,
rep. By its Managing Director,
Coimbatore. ... Respondent in all W.Ps.

W.P.No.6443 of 2021: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 45 days of Earned Leave, surrendered by him in the years before his retirement 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 per annum from the respective due dates or based on the monthly wages payable on the month of his retirement, together with 18% interest from the date of his retirement, within a time frame.

W.P.No.6451 of 2021: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 45 days of Earned Leave, surrendered by him in the years before his retirement 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 per annum from the respective due dates or based on the monthly wages payable on the month of his retirement, together with 18% interest from the date of his retirement, within a time frame.

W.P.No.6453 of 2021: 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 Leave, surrendered by him in the years before his retirement 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 per annum from the respective due dates or based on the monthly wages payable on the month of his retirement, together with 18% interest from the date of his retirement, within a time frame.

W.P.No.6456 of 2021: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 Leave, surrendered by him in the years before his retirement 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 per annum from the respective due dates or based on the monthly wages payable on the month of his retirement, together with 18% interest from the date of his retirement, within a time frame.

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For Petitioner in all W.Ps. : Mr.V.Ajoy Khose
For Respondent in all W.Ps. : Mr.A.Sundaravadanan

C O M M O N O R D E R

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 Respondent to pay them the amount payable towards the encashment of Earned Leave, surrendered by them in the years before their retirement as admitted by the Respondent, either based on their monthly wages of the respective months of surrender of those Earned Leaves, together with 18% interest per annum from the respective due dates, or based on the monthly wages payable on the month of their retirement, together with 18% interest from the date of their retirement.

2. As the issue involved in all the 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 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.

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) Respondent is directed to settle the amount payable towards encashment of Earned Leave, surrendered by the Petitioners in the years before their retirement, after adjusting the amount already paid to them, within a period of six weeks from the date of

receipt of a copy of this order;

(ii) Respondent is directed to pay interest @ 4% per annum to the Petitioners for the belated payment of terminal benefits that are yet to be settled, in six equal monthly instalments, commencing 01.06.2021;

(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.

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)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Managing Director,
Management of Tamilnadu State Transport Corporation (Kovai)
Ltd.,
Coimbatore Region, Coimbatore.

+1cc to Mr.Ajay Khose, Advocate SR.No. 16183

W.P.Nos.6443, 6451, 6453 & 6456 of 2021

JKL (CO)

A.SK(08.07.2021)