

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7286 of 2021

P.Baskaran

... Petitioner

-vs-

1. The Managing Director,
Tamil Nadu State Transport Corporation (VPM) Ltd.,
No.3/137, Salamedu, Vazhuthareddy PO.,
Villupuram - 605 602.

2. The Administrator,
Tamil Nadu State Transport Corporation,
Employees Pension Fund Trust,
Thiruvalluvar House, Pallavan Salai,
Chennai-600 002.

... Respondents

Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Mandamus, directing the respondents to pay interest @ 10% for the belated payment of the gratuity, leave salary, commutation of pension and other benefits to the petitioner for the period from 31.07.2019 the date of retirement to 23.01.2021 the date of settlement by following the order passed in W.A.(MD) Nos.383 to 457 of 2015 dated 12.06.2015 and in C.M.P.No.6352 of 2019 in W.A.No.665 of 2018 dated 13.07.2018 and in W.P.No.15886 of 2020 dated 19.01.2021.

For Petitioner : Mr.V.S.Jagadeesan

For Respondents: Mr.C.S.K.Sathish

ORDER

The benefits bestowed by law upon an employee in recognition of his committed continuous loyal and devoted duty by payment of the pension, gratuity, leave salary etc. are in the nature of property.

2. This right to property cannot be taken away without following due process of law, as right to property has been recognised under Article 300-A of the Constitution of India.

3. It is an accepted position that Gratuity and pension are not the bounties. The concern expressed by the Hon'ble Supreme Court impressing that the 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, and the observation needs as under:-

"....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. The Tamil Nadu State Transport Corporation is a State as defined under Article 12 of the Constitution of India. It is expected to be a model employer and as a State, it is expected to ensure the enjoyment of the fundamental rights to its employees.

5. Alleging that after retirement, the only source of survival is the terminal benefits and if it is not paid as per the time schedule prescribed under various enactments, that it would amount to violation of fundamental rights, this petition has been filed.

6. It is appropriate to consider the time limit prescribed under payment of gratuity Act, to understand the need for the timely payment of retirement dues. The Payment of Gratuity Act, 1972 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)"

7. Delay in payment:

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.

8. The Hon'ble Division Bench of this Court in the case of Government of Tamil Nadu, Rep. by its Secretary to Government, Revenue Department and the District Collector, Erode vs. M.Deivasigamani, reported in 2009 (3) MLJ 01 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, relying on Articles 14, 19 and 21 of the Constitution.

9. Coming to the facts of the present case, the petitioner joined the respondent Corporation and retired from service as Superintendent, on reaching the age of superannuation. He has now filed this writ petition seeking for a direction to the respondents to pay interest for the belated payment of gratuity, leave salary and commutation of pension amount.

10. The First Bench of this Court in similar matter has passed an order dated 12.06.2015 in W.A.(MD) Nos.383 to 457 of 2015, issuing direction to the transport Corporations to settle the terminal benefits of its employees in equal monthly installments and to pay 6% interest on the terminal benefits payable to the workman. The Bench has also held that workman is entitled to 18% interest for the defaulted period of installments.

11. Admittedly, the Hon'ble Division Bench of this Court in its order dated 12.06.2015 directed the Transport Corporations to pay 6% interest for the belated payments and this Court, sitting singly, is bound to follow the said judgment. However, considering the fact that the entire world has been shaken on the sudden impact of Covid-19 pandemic and there has been financial crisis all over the world, this Court has to see the balance of convenience of either side in the interest of justice, as such abnoxious situation did not prevail, when aforesaid order was passed by the Hon'ble Division Bench. The respondents herein have categorically stated 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.

12. In these circumstances, the writ petition is disposed of with the following directions:-

i) Considering the Covid situation, a direction is issued to the transport corporation to pay interest @ 4% per annum 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 from 01.04.2021. In case of delay in making instalments within the time stipulated supra, the interest payable could be @ 6% for the delayed period as per the judgment of the Division Bench, referred to above and the interest amount for the delayed period shall be recovered from the Officer responsible for disbursement of the amount;

ii) The aforesaid direction to pay interest will not preclude the workman to question the computation of any of the terminal benefits, if the same is paid lesser than the amount to which, he is entitled to receive. Likewise, if the petitioner has any grievance that he is entitled to interest for the amount already settled, he can agitate the same as per law, if he is entitled. No costs.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

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To:

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+1cc to Mr.C.S.K.Sathish, Advocate SR.No. 17927

W.P.No.7286 of 2021

A.SK(22.03.2021)