BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.07.2021
C O R A M
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU
W.P. (MD) No. 12717 of 2021

P.Senthilkumar ... Petitioner

-vs-

1.The Managing Director,
Tamil Nadu State Transport Corporation (Kum) Limited,
TNSTC Head Office,
No. 27, Railway Station New Road,
Kumbakonam - 612 001

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

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Second Respondent to pay 6% interest on the delayed payment of commutation of sum of Rs.5,00,773/- paid to the Petitioner on 19.11.2020, from the date of retirement of the Petitioner till the date of payment of the interest in view of the Petitioner's representation dated 01.07.2021.

For Petitioner : Mr.SP.Vijay Nivas
For R1 : Mr.P.Balasubramanian, Standing Counsel
For R2 : Mr.A.Swaminathan, Standing Counsel

O R D E R
(through video conference)

Heard Mr.SP.Vijay Nivas, Learned Counsel for the Petitioner, Mr. P.Balasubramanian, Learned Standing Counsel, who takes notice for the First Respondent, and Mr. A.Swaminathan, Learned Standing, who takes notice for the Second Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2.The Petitioner, who retired from service of the Respondents on 31.03.2018, was paid his retirement benefit, viz., commutation of pension, on 19.11.2020. It is claimed that the Petitioner made several requests for payment of interest for such belated payment of the commuted amount of pension and had also sent a representation dated 01.07.2021 in that regard. Since no action has been taken till date, this Writ Petition has been filed for directing the Second Respondent to pay interest at the rate of 6% per annum for belated payment of commuted amount of pension.

3.Learned Counsel for the Respondents contend that due to prevailing COVID pandemic situation, the Respondents have been facing severe financial constraints and as such, the question of paying interest for the delay in payment of the commuted amount of pension of the Petitioner would not arise, especially when there is no legal provision in that regard.

4.Having regard to the rival contentions made by both sides, neither any specific enabling provision nor any statutory prohibition has been shown by either of the parties for grant of interest for the delayed payment of commuted amount of pension. The Hon'ble Supreme Court of India in ***State of Jharkhand -vs- Jitendra Kumar Srivastava*** [(2013) 12 SCC 210] has explicated that terminal benefits which have been created in favour of the employees by statute partakes the character of emoluments protected as a right to property of the concerned employee under Article 300-A of the Constitution, which cannot be arbitrarily taken away without any authority of law. Since the withholding of such terminal benefits would amount to depriving the employee of his legitimate right to make use of his property at the time when he ought to have been paid the same on attaining the age of superannuation, he would have to be compensated for such delay by awarding interest.

5.It would be useful at this juncture to refer to the decision of the Hon'ble Supreme Court of India in ***State of Kerala -vs- M.Padmanabhan Nair*** [(1985) 1 SCC 429] where it has been stated as follows:-

> *"1. Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."*

The Hon'ble Supreme Court of India in ***Vijay L.Mehrotra -vs- State of U.P.*** [(2001) 9 SCC 687] expressed the view in the following words:-

> *"3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.*
> *4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e., 31-8-1997 till the date of payments."*

It has been held by the Hon'ble Supreme Court of India in ***S.K.Dua -vs- State of Haryana*** [(2008) 3 SCC 44] as follows:-

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

The Hon'ble Supreme Court of India in ***D.D. Tewari -vs- Uttar Haryana Bijli Vitran Nigam Ltd.,*** [(2014) 8 SCC 894] has restated that legal position.

6.The Division Bench of this Court in ***V.Rajendran -vs- Management of Tamil Nadu State Transport Corporation (Kumbakonam) Limited*** (Order dated 12.07.2021 in W.A. (MD) Nos. 1349 and 1350 of 2021) has fixed the current rate of interest at 6% per annum for delayed payment of terminal benefits in the case of similarly placed retired employees of the Transport Corporations across the State.

7.The result of the foregoing discussion is that the Petitioner shall be entitled to interest at the rate of 6% per annum for his retirement benefit, viz., commutation of pension, from the date of retirement till the date on which the said terminal benefit was paid and the Respondents shall make payment of the same to the Petitioner under written acknowledgment along with working-sheet showing the calculation and file report of compliance in that regard by 31.10.2021 before the Registrar (Judicial) of this Court.

In the upshot, this Writ Petition is ordered on the aforesaid terms. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Managing Director,
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2.The Administrator,
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Employees Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai – 600 002.

Copy to:

1.The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.BALASUBRAMANIAN, Advocate (SR-24304[F] dated 29/07/2021)

W.P. (MD) No. 12717 of 2021
28.07.2021

RS (27.08.2021) 4P 5C