BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W. P. (MD) No. 19428 of 2014

P.Sivathanulingam ... Petitioner

-vs-

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Public Works Department,
Chennai - 600 009.

2.The Deputy Secretary to Government,
Public Works Department,
Chennai - 600 009. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the Second Respondent in Letter No. 7712/F1/2013-I dated 08.04.2013 and consequential G.O. (D) No. 509, Public Works (F1) Department dated 05.12.2013 insofar as sanctioning interest at the rate of 8% per annum for the Death Cum Retirement Gratuity alone, quash the same and consequently directing the Respondents to pay interest at the rate of 18% per annum for the belated settlement of the Petitioner's all retirement benefits including surrender and encashment of earned leave salary, unearned leave salary on private affairs, commuted value of pension and all other attendant retiral benefits for the period from his date of retirement i.e., on 31.08.2001 to till the date on which the above said benefits were paid to him.

For Petitioner : Mr. A.Rahul
For Respondents : Mr. B.Saravanan,
Counsel appearing for the Government

<u>O R D E R</u>
(through video conference)

Heard Mr. A.Rahul, Learned Counsel for the Petitioner and Mr. B.Saravanan, Learned Counsel representing the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who had joined in the services of the Public Works Department of the Government of Tamil Nadu in the year 1971, had attained the age of superannuation on 31.08.2001, but he was not permitted to retire on the ground that disciplinary proceedings were pending against him for certain charges of misconduct and his retirement benefits were freezed by G.O. (3D) No. 76, Public Works (E1) Department dated 30.08.2001. In furtherance to the order dated 31.03.2011 passed by this Court in W.P. No. 7262 of 2007 filed by the Petitioner, the First Respondent by G.O. (D) No. 346, Public Works (E1) Department dated 04.10.2011 ordered that the charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, framed against the Petitioner be dropped. The terminal benefits that the Petitioner was entitled were thereafter paid to him as per the particulars shown below:-

Sl. No.	***Nature of retirement benefit***	***Date on which the same was settled***	***Period of delay***
(i)	Death cum Retirement Gratuity (DCRG) of Rs. 2,15,043/-	13.12.2008	7 Years and 3 Months
(ii)	Death cum Retirement Gratuity (DCRG) of Rs. 68,349/-	30.11.2012	11 Years and 3 Months
(iii)	Encashment of earned leave and unearned leave on private affairs of Rs. 1,59,304/- towards encashment of earned leave (8 months)	13.11.2008	7 Years and 2 Months
(iv)	Encashment of earned leave and unearned leave on private affairs of Rs. 57,748/- towards encashment of 2 months and 27 days of unearned leave on private affairs	13.11.2008	7 Years and 2 Months
(v)	Commuted Value of pension of Rs. 3,27,106/-	15.03.2013	11 Years and 6 Months

A representation dated 28.03.2013 was then made by the Petitioner to the First Respondent to sanction and pay interest at the rate of 12% per annum compounded annually for the belated settlement of his terminal benefits. The Second Respondent by Letter No. 7712/F1/2013-1 dated 08.04.2013 replied that the Petitioner would be entitled to interest at the rate of 8% per annum on Death-cum-Retirement Gratuity in terms of Rule 45-A of the Tamil Nadu Pension Rules, 1978, for the delayed payment of gratuity, but refused to entertain the claim for interest in respect of other terminal benefits by stating that there was no enabling provision for making such payment under the relevant rules. Aggrieved by the denial of interest for payment of terminal benefits (except Death-cum-Retirement Gratuity), the Petitioner has filed this Writ Petition challenging the same and for consequential direction for the Respondents to grant interest for those terminal benefits.

3. The justification canvassed by the Respondents for denying interest for the delayed payment of terminal benefits is that disciplinary proceedings were pending against the Petitioner at the time when he attained the age of superannuation and it was not possible to release his terminal benefits till it was concluded, meaning thereby that the delay cannot be said to be without reason so as to fasten the State with liability to compensate the Petitioner with interest, especially when the relevant rules do not contain any provision for awarding the same. Though the said submission appears to be attractive, it cannot be lost sight of the fact that when the disciplinary proceedings against the concerned employee is eventually dropped, the terminal benefits would have to be paid to him. Even in cases where the charges against the delinquent employee are proved, he may be entitled to disbursement of some part of the terminal benefits depending upon the nature of punishment that may be ultimately imposed upon him. In other words, the maximum amount of terminal benefits that a Government Employee would be entitled gets crystallized on the date when he attains the age of superannuation, irrespective of the fact that its disbursement is deferred on account of continuation of disciplinary proceedings after such date.

4. It must be recapitulated here that the Hon'ble Supreme Court of India in ***State of Jharkhand -vs- Jitendra Kumar Srivastava*** [(2013) 12 SCC 210] has highlighted that the terminal benefits which have been conferred in favour of the employees by statute partake 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. The Hon'ble Supreme Court of India in catena decisions in ***State of Kerala -vs- M.Padmanabhan Nair*** [(1985) 1 SCC 429], ***Vijay L.Mehrotra -vs- State of U.P.*** [(2001) 9 SCC 687] and ***D.D.Tewari -vs- Uttar Haryana Bijli Vitran Nigam Ltd.,*** [(2014) 8 SCC 894] has reiterated the legal position that an employee has to be compensated by way of interest for delayed payment of his terminal benefits. It

has been ruled by the Hon'ble Supreme Court of India in ***S.K.Dua -vs- State of Haryana*** [(2008) 3 SCC 44] that even in the 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 inasmuch as the retiral benefits are not in the nature of bounty and needs no authority in support thereof. The Hon'ble Supreme Court of India in ***Dr. Uma Agrawal -vs- State of Uttar Pradesh*** [(1999) 3 SCC 438] after referring to the relevant provisions of the Fundamental Rules applicable to the employees in the State of Uttar Pradesh prescribing time schedule for various steps to be taken in regard to the payment of pension and other retiral benefits, held that the governmental departments are required to take cognizance of the same atleast two years in advance of the date of retirement of an employee, and had awarded interest in that case on account of the delay in settling the terminal benefits of the employee concerned. In this context, it must be recapitulated here that corresponding provisions exist in Rules 53 and 57 of the Tamil Nadu Pension Rules, 1978. Viewed from these perspectives, it is not possible to uphold the impugned order insofar as it relates to the denial of interest to the Petitioner for delayed payment of terminal benefits. Having regard to the current rate of interest on fixed deposits offered by Nationalized Banks during the relevant period, it would be appropriate to award interest at the rate of 7.5% per annum to the Petitioner for the terminal benefits (except Death-cum-Retirement Gratuity) from the date of his retirement till the respective dates on which the terminal benefits had been paid to him. The Respondent shall make payment of the said amount to the Petitioner along with a working-sheet showing calculation in that regard under written acknowledgement and file report of compliance by 31.12.2021 in that regard before the Registrar (Judicial) of this Court.

6. While concluding, it is recommended to the Government of Tamil Nadu that in cases where terminal benefits or any part thereof is intended to be withheld at the time when the concerned employee attains the age of superannuation for any reason whatsoever, the diligent recourse to be followed in such circumstances would be to invest those withheld amounts in interest fetching fixed deposits in any nationalized bank initially for a period of one year renewable automatically thereafter for the same period from time to time till the ultimate decision is taken for disbursement of that amount or its forfeiture, as the case may be. If such sagacious procedure is adopted, it would certainly subserve the ends of justice as the employee would have the benefit from the accrued interest when the matter culminates in his favour, while the Government, as the employer, would not be mulcted with the liability to pay interest for such delayed payment. In the event of the matter concluding against the employee concerned, the forfeited amount could be taken back by the Government with interest. It is hoped that the Government of Tamil Nadu would earnestly consider this suggestion

and take expeditious action by issuing necessary administrative instructions through circulars to all the authorities concerned across the State for its effective implementation.

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

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ns/vjt

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.

(3) Copy of this order shall be sent to the following authorities:-

To

1.The Secretary to the Government of Tamil Nadu,
Public Works Department,
Chennai - 600 009.

2.The Deputy Secretary to Government,
Public Works Department
Chennai - 600 009.

3.The Chief Secretary to the Government of Tamil Nadu, Secretariat,
Fort St. George,
Chennai – 600 009.

4.The Additional Chief Secretary to the
Government of Tamil Nadu,
Finance Department,
Secretariat,
Fort St. George,
Chennai – 600 009.

5.The Secretary to the Government of Tamil Nadu,
Law Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

6.The Secretary to the Government of Tamil Nadu,
Personnel and Administrative Reforms Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

7.The Principal Accountant General of Tamil Nadu,
Lekha Pariksha Bhavan,
361, Anna Salai,
Teynampet,
Chennai - 600 018.

+1 CC to M/s.SPL GP (SR-24711[F] dated 30/07/2021)

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GC(24.09.2021) 6P 9C