IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. NO. 5259 OF 2022

E.Murugesan

… Petitioner

-vs-

1. The Managing Director
Tamil Nadu State Transport Corporation Ltd.
37, Mettupalayam Road
Coimbatore – 43.

2. The Administrator
Tamil Nadu State Transport Corporation EPF Trust
Thiruvalluvar House
Anna Salai, Chennai – 600 002.

... Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondents to pay interest for the belated payment of Provident Fund, Gratuity, Encashment of Earned Leave and Commuted Value of Pension at the rate of 12% per annum, within a specified time.

For Petitioner	:	Mr. N.Senthilkumar
For Respondents	:	Mr. A.Sundaravadanam Standing Counsel

O R D E R

Heard Mr. N.Senthilkumar, Learned Counsel for the Petitioner and Mr. A.Sundaravadanam, Learned Standing Counsel appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who retired from service of the First Respondent on 31.03.2019, after working as Assistant, was paid his retirement benefits, viz., gratuity, provident fund, and encashment of earned leave on 18.09.2019. It is claimed that the Petitioner made several requests for payment of interest for such belated payment of the terminal benefits and had also sent a representation dated 05.01.2022 in that regard. Since no action has been taken till date, this Writ Petition has been filed for directing the Respondents to pay interest at the rate of 12% per annum for belated payment of provident fund, gratuity, encashment of earned leave and commutation of pension.

3. Learned Standing Counsel appearing for the Respondents contends 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 terminal benefits 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, reference must at once be made in Section 7(3-A) of Payment of Gratuity Act, 1972, which provides that if the amount of gratuity payable to an employee within 30 days from the date of cessation of his employment is not paid, interest would have to be paid at such rate not exceeding the rate notified for long term deposits by the Central Government. The Hon'ble Supreme Court of India in H.Gangahanume Gowda -vs- Karnataka Agro Industries Corporation Ltd., [(2003) 3 SCC 40] and Y.K.Singla -vs- Punjab National Bank [(2013) 3 SCC 472] referring to that legal provision has reiterated that there is no discretion to the employer to deny interest for delayed payment of gratuity and only exception for the same would be:-

(i) when the delay in the payment of gratuity is due to the fault of the employee; and

(ii) the employer has obtained permission in writing from the Controlling Authority under the Payment of Gratuity Act, 1972, for the delayed payment on this ground.

It also requires to be noticed here that though the Central Government had issued the Notification No. S.O. 847 dated 01.10.1987 fixing the rate of interest for delayed payment of gratuity under Section 7(3-A) of the Payment of Gratuity Act, 1972, at 10% per annum, no modification of the same has been made till date and this Court in General Manager/Administration, Tamil Nadu State Transport Corporation (Kumbakonam) Limited -vs- D.Duraidhanapal (Order dated 01.02.2019 in W.P. (MD) Nos. 2334 to 2357 of 2019) observed as follows:-

"3. The learned counsel appearing for the workmen contended that the orders passed in these writ petitions do not warrant any interference. His submission is that as per Section 7(3A) of the Payment of Gratuity Act, 1972, a notification was already issued by the Central Government and it provides for awarding 10% interest. He would contend that the notification that was issued as early as in 1987 is still holding good and no modification notification has been issued. His specific contention is that the management is not justified in placing reliance on a notification issued by the Central Government setting out the rate for repayment of long term deposit and that a special notification under Section 7(3A) of the Act is required. In as much as the notification earlier issued under this provision is still holding the field, this Court will have to necessarily abide by the same.

4. I am not able to subscribe to the aforesaid submission. As rightly pointed out by the learned Standing Counsel for the management, no doubt, the special notification issued by the Central Government under Section 7(3)A of the Act stipulates awarding of 10% interest and that it has not been modified till date. But then, a notification issued under a statutory provision cannot be applied, if it would run counter to the statutory mandate. Section 7(3A) of the Act states that the employer shall pay from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify. In other words, this provision provides a upper ceiling limit for the rate of interest to be awarded. The upper ceiling limit is the rate notified by the Central Government for repayment of long term deposits.

5. It is not in dispute that for the period in question, the rate notified by the Central Government for repayment of long term deposit was between 8.7% per annum to 8.5% per annum. If the notification of the year 1987 that was originally issued under the provision is applied that would certainly run counter to the restriction laid down in Section 7(3A) of the Payment of Gratuity Act. Therefore, I am of the view that the appellate authority erred in awarding 10%

> interest. Considering the facts and circumstances of this case, the same is modified and reduced to 8.5% per annum."

In this backdrop, Learned Counsel for the Petitioner states that having regard to the current rate of interest on fixed deposits, the Petitioner would be satisfied if interest at the rate of 4% per annum is granted for the delayed payment of gratuity, and he has made an endorsement to that effect in the court record.

5. Coming to the leave encashment and other dues (except gratuity), neither any specific enabling provision nor any statutory prohibition has been shown by either of the parties. 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.

6. 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.

7. In view of the foregoing discussion, it would be appropriate to grant interest for belated payment at the current rate of 4% per annum from the date of retirement till the date on which the respective terminal benefits, viz., provident fund, gratuity, leave salary and commutation of pension, were paid, and the Respondents shall make payment of the said amount to the Petitioner along with working-sheet showing the calculation under written acknowledgment and file report of compliance in that regard by 31.05.2022 before the Registrar (Judicial) of this Court.

In the result, this Writ Petition is ordered on the aforesaid terms.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Managing Director
   Tamil Nadu State Transport
   Corporation Ltd.
   37, Mettupalayam Road
   Coimbatore - 43.

2. The Administrator
   Tamil Nadu State Transport
   Corporation EPF
   Trust
   Thiruvalluvar House
   Anna Salai, Chennai - 600 002.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+1cc to Mr. A.Sundaravadanam, Advocate, S.R.No.16406

W.P. No. 5259 of 2022

SPD(CO)
PM/06/04/2022