



W.P. No. 22278 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2022

CORAM

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

W.P. No. 22278 of 2016

C.B.Ranganathan

... Petitioner

-VS-

1. The Commissioner of Milk Production and Dairy Development
(Revisional Authority under Section 153 of
the Co-operative Societies Act)
Madavaram Milk Colony
Madvaram
Chennai – 600 051.

2. The Managing Director
Tamil Nadu Milk Producers Federation Limited
Aavin Illam
Madhavaram Milk Colony
Chennai – 600 051.

3. The General Manager
Vellore Tiruvannamalai District Milk
Producers Co-operative Union Ltd.
Sathuvachari
Vellore – 632 009.

Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, quashing the order of the First Respondent dated 27.04.2016 bearing Roc. No. 15012/2013/M1 and consequently direct the Second and Third Respondents to pay interest at the rate of 12% on the terminal benefits of the Petitioner such as gratuity, encashment of



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leave wages, superannuation fund etc., from the date of retirement of the Petitioner, viz., 31.01.2007 till the actual payment was made.

For Petitioner : Mr. Balan Haridas

For Respondents : Mr. O.S.Vijayasarithi (for R1 & R2)

Mr. R.Bala Ramesh (for R3)

ORDER

Heard Mr. Balan Haridas, Learned Counsel for the Petitioner, Mr. O.S.Vijayasarithi, Learned Counsel for the First and Second Respondents and Mr. R.Bala Ramesh, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner was working as Assistant General Manager in the Co-operative Society of the Second Respondent and when he attained the age of superannuation on 31.01.2007, he was placed under suspension due to pendency of surcharge proceedings, which culminated in the order dated 30.06.2014 in C.R.P. (NPD) No. 2056 of 2014 passed by the Court holding that the Petitioner was not liable for any amount. Thereafter, the terminal benefits of the Petitioner were paid on 28.12.2015 as per the particulars shown below:-



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S. No.	Details	Amount	Amount recovered	Payment made
(i)	Gratuity	Rs. 3,50,000/-	Nil	Rs. 3,50,000/-
(ii)	Leave Salary	Rs. 2,85,000/-	Rs. 78,547/-	Rs. 2,06,453/-

The recovery of the sum of Rs. 78,547/- made from the leave salary of the Petitioner is said to have been made in furtherance to the Order in Ref. No. 32089/Pers.Estt.1/2006 dated 08.11.2012 passed by the Second Respondent in which it has been held as follows:-

“ At the time of consider settlement of terminal benefits, the following amount shall be recovered from Thiru.

C.B.Ranganathan:-

i) A sum of Rs. 1,217/- (Travelling allowance) objected by the audit during the year 1997-98 as reported by Nilgiris DCMPU vide Lr. No. 3303/Admn/A2/2005 dated 04.05.2011.

ii) Equivalent amount towards stoppage of increment for 2 years with cumulative effect vide this office proceedings No. 32844/Pers.IR.2/2004 dated 23.01.2007.

iii) Equivalent amount towards stoppage of increment for 1 year without cumulative effect vide this office proceedings No. 25474/Pers.IR>3/2007 dated 03.11.2008.

iv) Equivalent amount towards stoppage of increment for 3



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months without cumulative effect vide this office proceedings

WEB COPY No. 12067/Pers.IR.2/2002 dated 20.07.2006.

The Petitioner had challenged the said order of recovery in a Revision Petition under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983, before the First Respondent, which was confirmed by Order in Roc. No. 15012/2013/M1 dated 27.04.2016, while also declining the claim made by the Petitioner for payment of interest for delayed payment of his terminal benefits citing that there was no provision in the by-laws of the Second Respondent in that regard, which is impeached in this Writ Petition.

3. It is highlighted by Learned Counsel for the Petitioner from Order in Re. 32089/Pers.Estt.1/2006 dated 08.11.2012 passed by the Second Respondent that except the paltry sum of Rs. 1,217/- towards audit objections for travelling allowance, other amounts recovered from the Petitioner related to implementation of punishment imposing stoppage of increments at the time of his retirement, which is not permissible as per the decision of the Division Bench of this Court in ***Management of Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., -vs- J.Arumugam*** (Order dated 30.06.2017 in W.A (MD) No. 465 of 2017 etc., batch. It has been unequivocally held in that decision that an employer cannot feign ignorance of the fact that on the date when the punishment of



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stoppage of increments was imposed on the employee, it was not capable of being implemented as he does not have the required remaining years of service, so as to convert the same later as recovery from the terminal benefits for other dues payable to him. Viewed from this perspective, there is absolutely no justification for the Second Respondent to convert the punishment of stoppage of increment imposed on the Petitioner at the time of his attaining the age of superannuation into that of recovery for an equivalent amount from his leave salary later under the guise of implementing the said punishment. Accordingly, the sum of Rs.77,330/- deducted by the Second Respondent from the encashment of leave salary of the petitioner is clearly illegal and has to be paid to him.

4. The First Respondent has declined the claim of the Petitioner for interest on leave salary on the specious plea that there is no provisions in the by-laws of the Second Respondent for grant of the same. The Hon'ble Supreme Court of India in a catena of 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 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



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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. This would obviously mean that the denial of interest for delayed payment of engagement of leave salary to the Petitioner cannot be upheld and the Petitioner would be entitled for interest at the rate of 6% per annum for the delayed payment of Rs. 2,06,453/- for the period from 31.01.2007 to 28.12.2015, apart from interest at the rate of 6% per annum on the illegally recovered amount of Rs. 77,330/- from 31.01.2007 till the said amount is actually paid to him.

5. Insofar as the claim of the Petitioner for interest on delayed payment of gratuity is concerned, reference must, at once, be made to Section 7(3-A) of the 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***



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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.

Inasmuch as the Second Respondent has not placed any material to show that the said condition for denial of interest have been established in this case, the Petitioner cannot be denied interest at the rate of 10% per annum for the delayed payment of gratuity of Rs. 3,50,000/- for the period from 31.01.2007 till 28.12.2015 in this case.

6. In view of the foregoing discussion, the Writ Petition is disposed on the following terms:-

- (i) the impugned Order in Roc. No. 15012/2013/M1 dated 27.04.2016 passed by the First Respondent is set aside;



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(ii) the Second Respondent shall make payment of the amounts due to the

WEB COPY Petitioner as per the particulars shown below:-

- (a) the sum of Rs. 77,330/-, which has been illegally recovered from the leave salary of the Petitioner, along with interest at the rate of 6% per annum for the period from 31.01.2007 till the date of actual payment;
 - (b) interest at the rate of 6% per annum for the delayed payment of Rs. 2,06,453/- towards leave salary due for the period from 31.01.2007 to 28.12.2015; and
 - (c) interest at the rate of 10% per annum for the delayed payment of Rs. 3,50,000/- towards death-cum-retirement gratuity for the period from 31.01.2007 to 28.12.2015.
- (iii) the Second Respondent, while making such payment, shall provide the working-sheet showing calculation for interest granted on the said amounts and file the report of such compliance by 31.12.2022 before the Registrar (Judicial) of the Court; and
- (iv) there shall be no order as to costs.

02.09.2022

Maya

Index: Yes/No



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Note: Issue order copy by 18.11.2022.

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To

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Sathuvachari
Vellore – 632 009.

Copy to

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



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P.D. AUDIKESAVALU, J.

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