



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

CORAM

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

W.P. No. 22889 of 2018

A.Arumugam

... Petitioner

-vs-

1. The Additional Chief Secretary to Government,  
Home (Transport-II) Department,  
Secretariat, Chennai-9.

2. The Accountant-General (A&E),  
Tamil Nadu, Chennai-18.

... Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the First Respondent herein in G.O. (D) No. 367, Home (Transport-II) Department, dated 19.04.2018 in so far as denying interest on DCRG amount from the date of retirement to the actual date of payment and quash the same and consequently direct the Respondents herein to pay 10% interest on the entire retirement benefits paid to the Petitioner such as unearned leave on private affairs, surrender of earned leave, Special Provident Fund, House Rent Allowance and City Compensatory Allowance, DCRG amount, Commutation of pension, Pay arrears and arrears of pension and other retirement benefits for the belated period from 01.07.2006 to 26.04.2017.

For Petitioner : Mr. Ravishanmugam

For Respondents : Mrs. C.Sangamithirai  
Special Government Pleader (For R1)

Mrs. T.S.Selvarani (For R2)

O R D E R

Heard Mr. Illamvazhudhi, Learned Counsel for the Petitioner, Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the First Respondent and Mrs. T.S.Selvarani, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the



parties.

2. The Petitioner, who had joined in service as Motor Vehicle Inspector Grade-II on 10.11.1980, had attained the age of superannuation on 30.06.2006, 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. (2D) Nos. 389 and 390, Home (Tr-II) Department dated 30.06.2006. In furtherance to the order dated 28.09.2007 in W.P. No. 22592 of 2006 passed by this Court, the First Respondent by G.O. (2D) No. 249, Home (Tr-II) Department dated 25.04.2008 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 was 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             | Amount         |
|---------|-----------------------------------|------------------------------------|-----------------------------|----------------|
| (i)     | Unearned Leave on private affairs | 22.07.2016                         | 10 Years, 21 days           | Rs. 76,290/-   |
| (ii)    | Surrender of earned leave         | 26.07.2016                         | 10 Years, 26 days           | Rs. 2,26,800/- |
| (iii)   | Special Provident Fund            | 26.07.2016                         | 10 Years, 26 days           | Rs. 23,000/-/- |
| (iv)    | H.R.A. And C.C.A. Arrears         | 29.11.2016                         | 10 Years, 4 Months, 29 days | Rs. 3,82,749/- |
| (v)     | DCRG                              | 15.02.2017                         | 10 Years, 7 Months, 15 days | Rs. 3,37,238/- |
| (vi)    | Commutation of pension            | 26.04.2017                         | 10 Years, 9 Months, 26 days | Rs. 4,35,931/- |
| (vii)   | Pay arrears                       | 26.04.2017                         | 10 Years, 9 Months, 26 days | Rs. 2,54,801/- |

The Petitioner has filed this Writ Petition challenging the order passed by the First Respondent in G.O. (D) No. 367, Home (Transport-II) Department, dated 19.04.2018 insofar as denying interest on DCRG amount from the date of retirement to the actual date of payment and for directing the Respondents to pay compensatory compound interest at the rate of 10% per annum for the belated payment of retirement benefits, viz., unearned leave



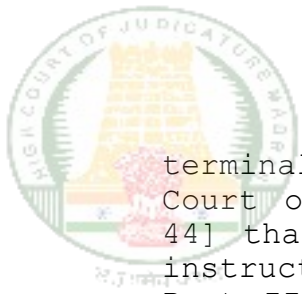
on private affairs, surrender of earned leave, special provident fund, house rent allowance and city compensatory allowance, death cum retirement gratuity, commutation of pension, pay arrears and arrears of pension and other retirement benefits for the belated period.

3. The justification canvassed by the Respondent for denying interest for the delayed payment of terminal benefits is that disciplinary proceedings were pending against the employee when he attained the age of superannuation and it was not possible to disburse the terminal benefits till it was concluded, meaning thereby that the delay cannot be said to be without reason so as to fasten the Respondent with liability to compensate the employee with interest, more particularly when the relevant rules do not contain any provision for awarding the same.

4. At this juncture, it cannot be lost sight of the fact that when 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 a delinquent employee are proved, he may be entitled to disbursement of some part of his 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 an 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.

5. 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.

6. 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 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.

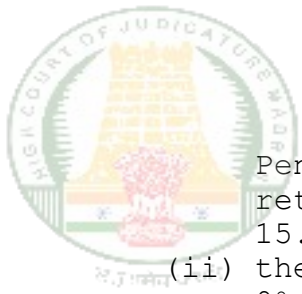
7. Insofar as death cum retirement gratuity is concerned, Rule 45-A of the Tamil Nadu Pension Rules, 1978, provides the rate and manner in which interest would have to be paid for its delayed payment. Though there is no express provision for grant of interest in respect of terminal benefits other than death cum retirement gratuity, there is equally no specific bar for its grant in the Tamil Nadu Pension Rules, 1978.

8. 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, has held that the governmental departments are required to take cognizance of the same at least 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 that corresponding provisions exist in Rules 53 to 66 of the Tamil Nadu Pension Rules, 1978, including sanction and disbursement of provisional pension till the disciplinary proceedings are concluded. This would obviously mean that any delay on the part of the concerned employee in submitting the pension proposal before or after attaining the age of superannuation is inconsequential insofar as it relates to the question as to his entitlement to receive interest for the delayed payment of the terminal benefits due to him from the respective dates on which it falls due.

9. The question that remains for consideration pertains to the rate of interest for terminal benefits other than death cum retirement gratuity which is covered by Rule 45-A of the Tamil Nadu Pension Rules, 1978. Having regard to the current rate of interest on fixed deposit offered by Nationalized Banks during the relevant time, it would be appropriate to award interest at the rate of 9% per annum for that period.

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

- (i) the Respondents are directed to pay interest at the rate and in the manner provided in Rule 45-A of the Tamil Nadu



Pension Rules, 1978, for the delayed payment of death-cum-retirement gratuity for the period from 30.06.2006 to 15.02.2017;

- (ii) the Respondents are directed to pay interest at the rate of 9% per annum on all terminal benefits except death-cum-retirement gratuity and pension for the belated period;
- (iii) the amount remaining due in terms of clauses (i) and (ii) supra shall be paid by way of demand draft in favour of the Petitioner along with a working-sheet showing calculation for the same under written acknowledgment and the report of compliance shall be filed by 30.09.2022 before the Registrar (Judicial) of the Court; and
- (iv) there shall be no order as to costs.

Sd/-  
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Maya/gd

To

1. The Additional Chief Secretary to Government,  
Home (Transport-II) Department,  
Secretariat, Chennai-9.
2. The Accountant-General (A&E),  
Tamil Nadu, Chennai-18.

Copy To:

The Registrar (Judicial)  
High Court, Madras.

+1cc to the Government Pleader, S.R.No.24306

W.P. No. 22889 of 2018

PM(CO)  
SB(09/06/2022)