IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM

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

W.P. No. 17097 of 2019

K.Bagavatheeswaran … Petitioner

-vs-

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

2. The Transport Commissioner
Chepauk, Chennai – 5.

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

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus directing the First Respondent herein to pay 10% interest on the entire retirement benefits Except DCRG such as Commutation of pension, Earned Leave Salary, Unearned Leave Salary, Special Provident Fund etc., for the belated period from 01.06.2003 to 24.06.2012 within a stipulated time.

For Petitioner :Mr. Ravi Shanmugam

For Respondents :Mrs. C.Sangamithirai (For R1 & R2)
Special Government Pleader

Mr. S.Balaji (For R3)

O R D E R

Heard Mr. Ravi Shanmugam, Learned Counsel for the Petitioner, Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the First and Second Respondents and Mr. S.Balaji, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who had joined in the service as Junior Assistant in the year 1969, had attained the age of

superannuation on 31.05.2003, but he was not permitted to retire on the ground that disciplinary proceedings were pending against him for certain charges of misconduct. Thereafter, the First Respondent by G.O. (D) No. 32, Home (Tr-II) Department dated 05.01.2012 ordered that the charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, framed against the Petitioner be dropped. Further, the Second Respondent by order dated 26.04.2012 had revoked the suspension of the Petitioner and by another order dated 22.05.2012 permitted the Petitioner to retire on superannuation on 31.05.2003 and certified that no charges are pending against him. The terminal benefits of the Petitioner were thereafter paid to him as per the particulars shown below:-

S. No.	Name of Benefit	Amount	Due Date	Delay
1.	DCRG	204056	31.05.2003	9 years
2.	Commutation	173595	31.05.2003	9 years
3.	Earned Leave Salary	105336	31.05.2003	9 years
4.	U.E.L. Salary	39501	31.05.2003	9 years
5.	S.P.F.	17364	31.05.2003	9 years

In furtherance to his representation dated 21.01.2014, interest at the rate of 10% per annum has been granted only on death cum retirement gratuity. The Petitioner has filed this Writ Petition for directing the First Respondent to pay interest at the rate of 10% per annum on other terminal benefits, viz., commutation of pension, encashment of earned leave and unearned leave and special provident fund, for the belated period from 01.06.2003 to 24.06.2012 within a time limit that may be stipulated by the Court.

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 Respondents 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 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.

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 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. 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 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 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. 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 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 30.09.2022 in that regard before the Registrar (Judicial) of this Court.

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

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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

2.The Transport Commissioner
Chepauk, Chennai – 5.

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

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

+1cc to Mr.S.Balaji, Advocate, S.R.No.26889
+1cc to the Government Pleader, S.R.No.26743

WP.No.17097 2019

SJ(CO)
KM(09/06/2022)