IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

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

W.P.NO.31320 OF 2017

P.Sadhu ... Petitioner

.Vs.

1. The Additional Chief Secretary
and Principal Commissioner
of Revenue Administration,
Chepauk, Chennai – 600 005.

2. The District Collector,
Villupuram District,
Villupuram - 605 602. ... Respondents

PRAYER:-

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the Respondents to pay to the Petitioner 12% interest from 31.10.2001 on the various retirement benefits paid to him with inordinate delay, based on the Petitioner's representation dated 15.07.2017, within a time frame fixed by the Court.

For Petitioner : Mr.S.Sathia Chandran

For Respondents : Mr.V.Jeevagiridharan
Additional Government Pleader

O R D E R

Heard Mr.S.Sathia Chandran, Learned Counsel for the Petitioner and Mr.V.Jeevagiridharan, Learned Additional Government Pleader for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was working as Assistant Commissioner (Excise), Villupuram, had attained the age of superannuation on 31.10.2001, 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.(2D) No.324, Revenue Department dated 31.10.2001. The Government of Tamil Nadu by G.O.(2D) No.133, Revenue [Ser-2 (3)] Department dated 20.03.2012 revoked the order of suspension of the Petitioner and permitted him to retire from service with effect from 31.10.2001 when he attained the age of superannuation. 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	Amount
(i)	DCRG	12.05.2014	Rs. 2,17,718/-
(ii)	Pension arrears	17.07.2014	Rs. 7,76,052/-
(iii)	Commutation of Pension	17.07.2014	Rs. 2,28,446/-
(iv)	Special Provident Fund	04.07.2013	Rs. 18,979/-
(v)	Earned Leave Encashment	13.08.2013	Rs. 1,09,124/-
(vi)	Pongal Exgratia Arrears	30.09.2014	Rs. 3,100/-
(vii)	HRA	07.11.2014	Rs. 1,14,863/-
(viii)	Interest on DCRG for the period from 01.11.2010 to 30.04.2016	08.07.2015	Rs. 3,98,498/-

The Petitioner has filed this Writ Petition for directing the Respondents to pay 12% interest to him from 31.10.2001 on the various retirement benefits paid to him with inordinate delay based on his representation dated 15.07.2017 within a time limit that may be fixed 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 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 Respondents 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. 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.

8. 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 the entire period of delay.

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

(i) the Respondents shall pay interest at the rate of 9% per annum on pension payable to the employee for each month on the respective dates on which it falls due for the period from 31.10.2001 to 16.07.2014; and

(ii) the Respondents shall pay interest at the rate of 9% per annum on commutation of pension for the period from 31.10.2001 to 16.07.2014;

(iii) the Respondents shall pay interest at the rate of 9% per annum on special provident fund for the period from 31.10.2001 to 03.07.2013;

(iv) the Respondents shall pay interest at the rate of 9% per annum on encashment of earned leave for the period from 31.10.2001 to 12.08.2013;

(v) the amount remaining due in terms of clauses (i) and (iv) 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

(vi) there shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Additional Chief Secretary
and Principal Commissioner
of Revenue Administration,
Chepauk, Chennai - 600 005.

2. The District Collector,
Villupuram District,
Villupuram - 605 602.

Copy To:-

The Registrar - Judicial,
High Court, Madras - 104.

+1cc to Mr.S.Sathia Chandran, Advocate, S.R.No.38763
+1cc to the Government Pleader, S.R.No.39002

W.P.NO.31320 OF 2017

SKM(CO)
PBS/08/07/2022