



WP No.31626 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 01-11-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.31626 of 2017

S.A.Antony

..

Petitioner

vs.

1.The Secretary to Government,
Handloom, Handicrafts, Textiles and
Khadhi Department,
Fort St. George,
Chennai-09.

2.The Director of Sericulture,
Nethaji Nagar,
Hasthampatty,
Salem.

..

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to pay compound interest @ 12% per annum for the belated payment of retirement benefits namely DCRG and commutation of pension and encashment of earned leave due to the petitioner.

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For Petitioner

: Mr.S.Sivakumar

For Respondent-1

: Mr.M.Muthusamy,
Government Advocate.

For Respondent-2

: Ms.V.Yamuna Devi,
Special Government Pleader.

ORDER

The relief sought for in the present writ petition is for a direction to the respondents to pay compound interest @ 12% per annum for the belated payment of retirement benefits namely DCRG and commutation of pension and encashment of earned leave due to the petitioner.

2. The petitioner holding the post of Deputy Director of Sericulture and retired from service on 30.06.2009 and the order passed in G.O.Ms.No.70, Handloom, Handicrafts, Textiles and Khadhi Department, dated 30.06.2009, states that the petitioner was permitted to retire from service on attaining the age of superannuation on 30.06.2009 A.N., without prejudice to the departmental disciplinary proceedings pending against him.



3. It is not in dispute that the departmental disciplinary proceedings were initiated against the writ petitioner, while he was in service on the date of retirement. The said departmental disciplinary proceedings were pending against the writ petitioner and consequently, he was allowed to retire from service without prejudice to the departmental disciplinary proceedings.

4. The petitioner in the year 2014 filed WP No.19520 of 2014 and this Court passed final orders on 12.08.2014, directing the respondents to settle the Gratuity payable to the writ petitioner, within a period of eight weeks from the date of receipt of a copy of that order. Pursuant to the directions issued by this Court, the DCRG, as applicable, was settled in favour of the writ petitioner even during the pendency of the departmental disciplinary proceedings. Thereafter, the departmental disciplinary proceedings were disposed of and final orders were issued in the year 2016 and the punishment of cut in pension was imposed on the writ petitioner.



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5. The final order in the departmental disciplinary proceedings were issued in G.O.Ms.No.13, Handloom, Handicrafts, Textiles and Khadhi Department, dated 24.03.2016, the punishment of cut in pension of a sum of Rs.500/- for 36 months from his pension was imposed and accordingly, the departmental disciplinary proceedings ended with an order of punishment under Rule 9 of the Tamil Nadu Pension Rules, 1978.

6. The learned counsel for the petitioner states that the petitioner was allowed to retire from service without prejudice to the departmental disciplinary proceedings. Once an employee was allowed to retire from service then, he is entitled for the terminal and pensionary benefits and therefore, such benefits ought to have been settled in the year 2009 itself. However, the DCRG was settled pursuant to the orders of this Court passed in the year 2014 and other benefits were only after the disposal of the departmental disciplinary proceedings. Therefore, the petitioner is entitled to claim interest for the entire belated payment of settlement from the date of his retirement.



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7. In this regard, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of **State of Jharkhand and Others vs. Jitendra Kumar Srivastava and Another [(2013) 12 SCC 210]** wherein in paragraph 8 of the judgment, it has been held as follows:-

“8. It is an accepted position that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. Conceptually it is so lucidly described in D.S. Nakara v. Union of India [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] by D.A. Desai, J. who spoke for the Bench, in his inimitable style, in the following words : (SCC pp. 319-20, paras 18-20)

“18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay



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pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced



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through court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad vs. State of Bihar [(1971) 2 SCC 330 : 1971 Supp SCR 634] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This



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view was reaffirmed in State of Punjab vs. Iqbal Singh [(1976) 2 SCC 1 : 1976 SCC (L&S) 172 : (1976) 2 LLJ 377].”

It is thus a hard earned benefit which accrues to an employee and is in the nature of “property”. This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.”

8. The learned Special Government Pleader, appearing on behalf of the second respondent, objected the contentions raised on behalf of the petitioner by stating that the departmental disciplinary proceedings initiated against the writ petitioner were pending, but the date of superannuation. Therefore, the he was allowed to retire from service without prejudice to the departmental disciplinary proceedings and only after the disposal of the departmental disciplinary proceedings, the benefits would be settled.



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9. In the present case, the DCRG was settled pursuant to the directions issued by this Court in WP No.19520 of 2014 dated 12.08.2014 and the other benefits would be settled only after the disposal of the departmental disciplinary proceedings, which were ended with an order of punishment. When the departmental disciplinary proceedings were pending and the departmental disciplinary proceedings were ended with an order of punishment, the petitioner is not entitled to claim interest for the belated settlement of his terminal benefits.

10. In this regard, the contention of the respondents as stated in paragraphs 10 and 11 read as under:-

“10. In order to comply with the directions of the Court order, the total Death-cum-Retirement Gratuity of Rs.6,87,638/- had been sanctioned and settled to the petitioner on 22.04.2015. However, after receiving Gratuity amount, the petitioner Thiru S.A.Antony, Deputy



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Director of Sericulture (Retired) filed this case in WP No.31626 of 2017 to direct the respondents to pay compound interest @ 12% per annum for the belated payment of Death-cum-Retirement Gratuity. However, it is stated in this regard that the petitioner was granted receipt of his DCRG only through the Hon'ble High Court's order dated 12.08.2014 in WP No.19520 of 2014 and there was no direction therein to pay 12% interest to the petitioner. The second respondent herein states that the petitioner's claim for 12% interest does not have any legal validity especially in view of the fact that the petitioner was found guilty of the charges framed against him vide Charge Memo No.38769/CD1/2002 dated 05.11.2002 and was found fit to be awarded punishment. In view of this fact, the second respondent states that G.O.No.527, Finance (Pension) Department, dated 15.06.1987 would be squarely applicable to the instant case, which state as follows:-

“4(i) No interest shall be payable in cases where the delay in the payment of Death cum



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Retirement Gratuity is due to the Institution of departmental or judicial proceedings against the Government Servant concerned unless a specific determination is made that the Government Servant is not guilty of the charges preferred against him in the proceedings.”

11. It is clear from the afore-extracted Clause 4(i) of G.O.No.527 that once a departmental disciplinary proceedings against a particular person has concluded in that concerned person being found to be guilty, no interest is liable to be paid to him. Accordingly, in the present case, the petitioner is not eligible for any grant of interest in view of him having found to be guilty and punishment awarded, as stated above.”

11. In view of the fact that on the date of retirement, the petitioner was facing the departmental disciplinary proceedings and he was allowed to retire from service without prejudice to the departmental



disciplinary proceedings and such departmental disciplinary proceedings were ended with an order of punishment, the petitioner is not eligible to claim the interest for the delayed settlement on the terminal benefits as such delay occurred on account of the pendency of the departmental disciplinary proceedings and the same cannot be construed as an administrative delay in settling the terminal benefits.

12. The interest for the belated settlement of terminal benefits would be applicable only if there is an administrative delay on the part of the Authorities in settling such terminal benefits, but not otherwise. The concept of interest for the belated settlement of terminal benefits was introduced in order to mitigate the circumstances arising on account of the belated settlement of terminal benefits. Therefore, interest can be claimed only if there is an administrative delay in settling the terminal benefits and not otherwise.

13. However, in the present case, there was no administrative delay and the departmental disciplinary proceedings pending against the writ



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petitioner were ended with an order of penalty. Therefore, the petitioner is not entitled for the relief as such sought for in the present writ petition.

14. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

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Index : Yes/No.
Internet : Yes/No.
Speaking Order/Non-Speaking Order.
Svn

To

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2.The Director of Sericulture,
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