IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 31.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.18418 of 2017
and
W.M.P.No.34280 of 2018

N.R.Gayathri ...Petitioner

Vs

1. The Secretary to Government,
   Social Welfare and Nutritious
   Meal Program Department,
   Secretariat, Chennai - 9.

2. The Director of Social Welfare,
   SIDCO Industrial Estate,
   Guindy, Chennai - 32.

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

4. The Pension Pay Officer,
   College Road, Chennai - 6. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to settle the petitioner's retirement benefits such as arrears of pension of about Rs.13,00,000/-, Surrender of leave salary of about Rs.3,44,456/-, Unearned leave on private affairs of about Rs.1,11,606/-, arrears of increment and other benefits with interest at 10% per annum for the belated payment of retirement benefits for the period from 01.12.2012 till the actual date of payment and interest at 10% on the DCRG amount of Rs.5,27,222/- for the period from 01.12.2012 to 07.07.2017.

For Petitioner : Mr.Ravi Shanmugam

For R1 to R3 : Mr.E.Veda Bagath Singh,
Special Government Pleader

ORDER

While serving as a Superintendent under the second respondent herein, the petitioner had submitted an application for voluntary retirement from service on 02.04.2012, which was rejected by them on 13.09.2012. Challenging the same, a Writ Petition came to be filed in W.P.No.27384 of 2012 and this Court, in its order dated 09.01.2013, had directed the respondents to accept the voluntary retirement with effect from 09.11.2012, in the following manner:-

> "5. In view of the aforesaid conclusion, the impugned order is quashed and the respondent is directed to accept the voluntary retirement of the petitioner with effect from 9.11.2012 and to recover the entire amount that is sought to be withheld as per the punishment order dated 23.4.2012, under Rule 8(iii) mentioned above. The respondent is directed to undertake the aforesaid exercise within a period of six weeks from the date of receipt of copy of this order. The writ petition is allowed on the above terms. No costs."

2. Inspite of the order passed by this Court to accept the petitioner's voluntary retirement within six weeks, the second respondent had chosen to pass orders after 1 year and 4 months on 29.05.2014, retiring the petitioner voluntarily with effect from 09.11.2012. Thereafter, another 3 years was consumed for disbursement of the death-cum-retirement and gratuity benefits and the first installment of DCRG benefits of Rs.5,27,222/- was paid to the petitioner on 07.07.2017; pension arrears of Rs.1,11,509/- was paid on 17.07.2017; leave salary of Rs.2,98,122/- was paid on 18.09.2019; final surrender leave pay of Rs.1,27,736/- was paid on 16.09.2019; selection grade and special grade arrears of Rs.2,73,950/- was paid on 18.02.2021; differential gratuity and commutation of pension of Rs.1,30,667/- was paid on 04.11.2021 and the arrears of pension of Rs.3,89,836/- was credited on 17.11.2021.

3. The learned counsel for the petitioner placed reliance on a judgment of the Hon'ble Division Bench of this Court in the case of Government of Tamil Nadu, Rep. by the Secretary to Government, Revenue Department Vs M.Deivasigamani reported in (2009) 3 MLJ 1 for claiming interest on the belated payment of the retirement benefits.

4. The learned Special Government Pleader appearing for the respondents 1 to 3 placed reliance on the averments in the counter affidavit and submitted that since there was a fire accident in the office of the second respondent on 16.01.2012,

the records were lost and therefore, they could not disburse the monetary benefits within time.

5. Even assuming that the petitioner's records were lost in the fire, there is absolutely no justification for disbursing the benefits after about 5 years therefrom, which delay is inordinate in nature. Thus, the objection raised by the respondents in this regard, cannot be sustained.

6. As rightly pointed out by the learned counsel for the petitioner, the Hon'ble Division Bench, while considering the belated payment of retirement benefits in M.Deivasigaman's case (supra), was of the view that the Government employee therein would be entitled for interest for the delayed period. The relevant portion of the order reads as follows:-

> "6. The contention of the appellant that as per the Government norms, interest can be paid only on Death-cum-Retirement Gratuity, in case of delay and the same cannot be awarded to any other retiral benefits, is not tenable, in view of the decision of the Supreme Court in S.K.Due v. State of Haryana reported in 2008 (3) SCC 44. In the reported case, the appellant therein was served with three charge sheets/show cause notices in June 1998, few days before his retirement. However, he retired on 30.06.1998 on reaching the age of superannuation. He was paid provisional pension, but other retiral benefits were not given to him, which included commuted value of pension, leave encashment, gratuity, etc. They were withheld till the finalisation of disciplinary proceedings. While answering the issue as to whether the appellant therein was entitled to interest on delayed payment of retiral benefits, in the absence of any statutory rules/administrative instructions or guidelines, the Supreme Court, at Paragraph 14 of the judgment, held as follows:
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> > "14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But 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. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

7.In view of the judgment of the Supreme Court, it is now well settled that an employee is entitled to interest on belated payment of pension and other retiral benefits, even in the absence of statutory rules/administrative instructions or guidelines and he claim for interest, under Part III of the Constitution, relying on Articles 14, 19 and 21 of t can make his he Constitution."

7. By applying the ratio laid down by the Hon'ble Division Bench in M.Deivasigaman's case (supra), this Court is of the view that the interest, if fixed at 6% per annum on the belated payment, is ordered, the same would be just and reasonable.

8. In the result, there shall be a direction to the second respondent to pass appropriate orders granting interest on the belated payment of the retirement benefits to the petitioner at the rate of 6% per annum from 09.11.2012 till the date of actual payment. The second respondent shall pass such orders, within a period of four weeks from the date of receipt of a copy of this order and disburse the same simultaneously.

9. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
   Social Welfare and Nutritious
   Meal Program Department,
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2. The Director of Social Welfare,
   SIDCO Industrial Estate,
   Guindy, Chennai - 32.

3. The Accountant General (A&E),
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4. The Pension Pay Officer,
   College Road, Chennai – 6.

+1cc to the Government Pleader, S.R.No.5995

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NSK 14/02/2022