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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022

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

W.P. No. 29700 of 2018

G.Vajiravelu

... Petitioner

-vs-

1. Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Head Office, represented by its
Managing Director,
Vazhuthareddy Post,
Villupuram-605 602.

2. The General Manager,
Tamil Nadu Transport
Corporation (Villupuram) Ltd.,
Kancheepuram Region,
Regional Office,
Near Ponnerikarai,
Karaipettai Post,
Kancheepuram.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondents to pay the Petitioner interest at the rate of 10% per annum for a sum of Rs. 3,92,819/- which was paid to him towards gratuity belatedly, for the period from 01.09.2013 to 29.08.2018.

For Petitioner : Mr. V.Ajoy Khose

For Respondents: Mr. G.Saravanakumar, Standing Counsel

O R D E R

Heard Mr.V.Ajoy Khose, Learned Counsel for the Petitioner and Mr.G.Saravanakumar, Learned Standing Counsel appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2.The Petitioner, after working as Special Grade Conductor in the service of the First Respondent, had retired on 31.07.2013 but his gratuity was belatedly paid on 29.08.2018, for which he had made representation dated 20.10.2018 for payment of interest. The Writ Petition has been filed in that regard.



3. In this context, reference must at once be made in Section 7(3-A) of Payment of Gratuity Act, 1972, which provides that if the amount of gratuity payable to an employee within 30 days from the date of cessation of his employment is not paid, interest would have to be paid at such rate not exceeding the rate notified for long term deposits by the Central Government. The Hon'ble Supreme Court of India in H.Gangahanume Gowda -vs- Karnataka Agro Industries Corporation Ltd., [(2003) 3 SCC 40] and Y.K.Singla -vs- Punjab National Bank [(2013) 3 SCC 472] referring to that legal provision has reiterated that there is no discretion to the employer to deny interest for delayed payment of gratuity and only exception for the same would be:-

- (i) when the delay in the payment of gratuity is due to the fault of the employee; and
- (ii) the employer has obtained permission in writing from the Controlling Authority under the Payment of Gratuity Act, 1972, for the delayed payment on this ground.

It also requires to be noticed here that though the Central Government had issued the Notification No. S.O. 847 dated 01.10.1987 fixing the rate of interest for delayed payment of gratuity under Section 7(3-A) of the Payment of Gratuity Act, 1972, at 10% per annum, no modification of the same has been made till date and this Court in General Manager/Administration, Tamil Nadu State Transport Corporation (Kumbakonam) Limited -vs- D.Duraidhanapal (Order dated 01.02.2019 in W.P. (MD) Nos. 2334 to 2357 of 2019) observed as follows:-

"3. The learned counsel appearing for the workmen contended that the orders passed in these writ petitions do not warrant any interference. His submission is that as per Section 7(3A) of the Payment of Gratuity Act, 1972, a notification was already issued by the Central Government and it provides for awarding 10% interest. He would contend that the notification that was issued as early as in 1987 is still holding good and no modification notification has been issued. His specific contention is that the management is not justified in placing reliance on a notification issued by the Central Government setting out the rate for repayment of long term deposit and that a special notification under Section 7(3A) of the Act is required. In as much as the notification earlier issued under this provision is still holding the field, this Court will have to necessarily abide by the same.

4. I am not able to subscribe to the aforesaid submission. As rightly pointed out by the learned Standing Counsel for the management, no doubt, the special notification issued by the Central Government under Section 7(3A) of the Act stipulates awarding of 10% interest and that it has not been



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modified till date. But then, a notification issued under a statutory provision cannot be applied, if it would run counter to the statutory mandate. Section 7(3A) of the Act states that the employer shall pay from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify. In other words, this provision provides a upper ceiling limit for the rate of interest to be awarded. The upper ceiling limit is the rate notified by the Central Government for repayment of long term deposits.

5. It is not in dispute that for the period in question, the rate notified by the Central Government for repayment of long term deposit was between 8.7% per annum to 8.5% per annum. If the notification of the year 1987 that was originally issued under the provision is applied that would certainly run counter to the restriction laid down in Section 7(3A) of the Payment of Gratuity Act. Therefore, I am of the view that the appellate authority erred in awarding 10% interest. Considering the facts and circumstances of this case, the same is modified and reduced to 8.5% per annum."

In this backdrop, Learned Counsel for the Petitioner states that having regard to the current rate of interest on fixed deposits, the Petitioner would be satisfied if interest at the rate of 4% per annum is granted for the delayed payment of gratuity, and he has made an endorsement to that effect in the court record.

4. In such circumstances, the Respondents shall make payment of interest at the rate of 4% per annum for the belated payment of gratuity to the Petitioner along with working-sheet showing the calculation under written acknowledgment and file a report of compliance in that regard by 30.09.2022 before the Registrar (Judicial) of this Court.

In the result, this Writ Petition is ordered on the aforesaid terms. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar



To

1. The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Head Office,
Vazhuthareddy Post,
Villupuram-605 602.

2. The General Manager,
Tamil Nadu Transport
Corporation (Villupuram) Ltd.,
Kancheepuram Region,
Regional Office,
Near Ponnerikarai,
Karaipettai Post,
Kancheepuram.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No. 25201
+1cc to Mr.G.Saravanakumar, Advocate, S.R.No. 25310

W.P. No. 29700 of 2018

JPL(CO)
GN(13/06/2022)