IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2022

CORAM

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

W.P. No. 30761 of 2018

G.Thirumurugan ...Petitioner

-vs-

1. The Secretary to Government
   Rural Development and Panchayat Raj Department
   Secretariat
   Chennai – 600 009.

2. The Director
   Rural Development Panchayat Raj
   Panagal Building
   Saidapet, Chennai - 600 005.

3. The District Collector
   (Development Division)
   Cuddalore District.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in Na.Ka. No. 58780/2018/G/E.2.3 of the Second Respondent to award interest at the rate of 12% for the delayed payment of commutation of Rs.3,62,065/- for the delayed period of 58 months and encasement of earned Leave of Rs.3,38,511/- for the delayed period of 55 months.

For Petitioner : Mr. A.Nileshram
for M/s.K.M.Vijayan Associates

For Respondents : Mrs. C.Sangamithirai,
Special Government Pleader

O R D E R

Heard Mr. A.Nileshram, Learned Counsel for the Petitioner and Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who had joined the service of the Rural Development and Panchayat Raj Department, had attained the age of superannuation on 30.04.2010, 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. Subsequently, the Third Respondents by Order in Na. Ka. No. PaA1/9934/2009 dated 11.08.2014 had dropped the charges against the Petitioner and the terminal benefits that the Petitioner was entitled were thereafter paid to him as per the particulars shown below:-

Sl. No.	Nature of retirement benefit	Date on which the same was settled	Period of delay	Amount
(i)	Earned Leave 230 days Unearned Leave on Private Affairs 180 days	12.03.2015	55 Months	Rs. 3,38,511/-
(ii)	Special Provident Fund cum Gratuity Scheme	10.09.2015	63 Months	Rs. 27,607/-
(iii)	DCRG	29.05.2015	57 Months	Rs. 5,05,197/-
(iv)	Commutation	08.06.2015	58 Months	Rs. 3,62,065/-

A representation dated 03.03.2016 was then made by the Petitioner to the First Respondent to sanction and pay interest at the rate of 12% per annum compounded annually for the belated settlement of his terminal benefits. The Second Respondent by Order in Na. Ka. No. 15110/2016/G.E.2.3 dated 09.03.2016 directed the Third Respondent to pass appropriate orders. Since the Third Respondent had not passed any order in furtherance to that order, the Petitioner has filed the Writ Petition in W.P. No. 40553 of 2016, which was disposed by order dated 18.11.2016 directing the Respondents to consider that representation within a period of four weeks from the date of receipt of that order. Thereafter, the First Respondent by G.O. (Pa) No. 474, Rural Development and Panchayat Raj (E6) Department dated 25.09.2017 sanctioned interest for delayed payment of death cum retirement gratuity alone. At that stage, the Petitioner had made another representation dated 06.09.2018 to the First Respondent to sanction interest for the delayed payment of other terminal benefits and the Second Respondent by Order in Na. Ka. No. 58780/ 2018/G.E.2.3 dated 01.10.2018 rejected that representation. In that backdrop, the Petitioner has filed this Writ Petition challenging the said order dated 01.10.2018 passed by the Second Respondent and to consequently direct the Second Respondent to award interest at the rate of 12% per annum for the belated payment of retirement benefits, viz., commutation of pension, surrender of earned leave and unearned leave on private affairs for the delayed period.

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

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Secretary to Government
   Rural Development and Panchayat Raj Department
   Secretariat
   Chennai - 600 009.

2. The Director
   Rural Development Panchayat Raj
   Panagal Building
   Saidapet, Chennai - 600 005.

3. The District Collector
   (Development Division)
   Cuddalore District.

Copy to

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

+1cc to Government Pleader SR. No. 19876

W.P. No. 30761 of 2018

SJ (CO)
PR (20/06/2022)