IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

CORAM

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

W.P. NO. 32476 OF 2018

S.M.Khasim

… Petitioner

-vs-

1. The Principal Secretary to Government,
Housing and Urban Development Department,
Fort St. George,
Chennai – 600 009.

2. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai – 600 034.

... Respondents

Prayer:-

Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondents to pay compensatory interest at the rate of 12% with cumulative interest for the belated payment of retirement benefits i.e. DCRG, Commuted value of pension, surrender of EL and leave on private affairs with effect from 31.05.2000 and to disburse the additional charge allowance due to the Petitioner with interest.

For Petitioner : Mr. T.Ramkumar

For Respondents: Mr. P.Gurunathan,
Additional Government Pleader (for R1)

Mr. R.Bharathkumar (for R2)

O R D E R

Heard Mr. T.Ramkumar, Learned Counsel for the Petitioner, Mr. P.Gurunathan, Learned Additional Government Pleader appearing for the First Respondent and Mr. R.Bharathkumar, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who had joined in the service of the Tamil Nadu Housing Board on 02.06.1962, had attained the age of superannuation on 31.05.2000, 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. (D) No. 131, Housing and Urban Development (HB1(1)) Department dated 24.07.2009. In furtherance to the order dated 15.09.2014 in W.P. No. 14865 of 2011 passed by this Court, the Second Respondent by Proceedings No. DC2/3515/1997 dated 28.05.2015 imposed the punishment of stoppage of two increments without cumulative effect for a period of two years and made payment of his terminal benefits after recovering certain amounts due from him. The details of the terminal benefits paid to the Petitioner are shown below:-

Sl. No.	Nature of retirement benefit	Date on which the same was settled	Period of delay	Amount
(i)	Encashment of earned leave on private affairs	13.12.2010	10 Years, 8 Months and 16 Days	Rs. 2,75,388/-
(ii)	Gratuity	24.05.2016	16 Years	Rs. 3,33,566/-
(iii)	Commutation of pension	24.05.2016	16 Years	Rs. 2,03,037/-
(iv)	Interest on Death cum Retirement Gratuity (DCRG) for the period from 01.11.2010 to 30.04.2016	04.12.2017	Interest not paid from 31.05.2000 to 31.10.2010 and 01.05.2016 to 23.05.2016	Rs. 1,84,951/-

The Petitioner has filed this Writ Petition for directing the Respondents to pay compensatory compound interest at the rate of 12% per annum for the belated payment of retirement benefits, viz., death cum retirement gratuity, commuted value of pension, surrender of earned leave and leave on private affairs with effect from 31.05.2000 and to disburse the additional charge allowance due to him.

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.

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.

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.

7. It is not in dispute that Rule 45-A of the Tamil Nadu Pension Rules, 1978 provides for interest on delayed payment of death cum retirement gratuity and the Respondents have made the payment of Rs. 1,84,951/- as interest towards the same for the period from 01.11.2010 to 30.04.2016, but have not explained as to why it has not been extended for the period from 31.05.200 to 31.10.2010 and from 01.05.2016 to 23.05.2016. In such circumstances, it shall be incumbent upon the Respondents to re-examine the claim of the Petitioner for interest of death cum retirement gratuity for the entire period and pass fresh orders taking into account the part payment made in that regard.

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 pass reasoned orders on the claim made by the Petitioner for grant of interest on delayed payment of death-cum-retirement gratuity as per Rule 45-A of the Tamil Nadu Pension Rules, 1978, in that regard;
(ii) the Respondents shall pay interest at the rate of 9% per

annum on leave salary for the period from 01.06.2000 to 13.12.2010;

(iii) the Respondents shall pay interest at the rate of 9% per annum on commutation of pension for the period from 01.06.2000 to 23.05.2016;

(iv) the amount remaining due in terms of clauses (i) to (iii) 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

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

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Principal Secretary to Government,
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.

2. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 034.

+1cc to Mr.R.Bharathkumar, Advocate, S.R.No.13208

W.P. No. 32476 of 2018

SKM(CO)
PM/06/07/2022