



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P (MD) No.11373 of 2021

Saraswathi

... Petitioner

-Vs-

1. The state of Tamil Nadu,
Represented by Secretary to the Government,
Department of Rural Development,
4th Floor, St.George,
Chennai - 600 108.
2. The Director,
Department of Rural Development (Audit),
Kurazhagam, 4th Floor,
Chennai - 600 108.
3. The Director,
Local Fund Audit,
4th Floor, Nandhanam,
Chennai - 600 035.
4. The District Collector,
Madurai District,
Madurai.
5. The Commissioner,
Thirumangalam Panchayat Union,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent in his proceedings in Na.Ka.No.16467/U.O.O.S(2)/2020 dated 28.10.2020 and quash the same as illegal, arbitrary, violation of law and further direct the first and second respondents herein to take necessary steps to pay the interest for the belated payment of Death-cum-Retirement benefits of Sundaraj who died on 26.11.2005, in accordance with Tamil Nadu Pension Rules, 1978.



For Petitioner : Mr.M.Jothi Basu
For Respondents : Mr.A.Kannan
Additional Government Pleader

O R D E R

WEB COPY

The Writ Petition has been filed as against the order dated 28.10.2020, passed by the third respondent, rejecting the request of the petitioner for interest to the belated payment of terminal benefits to the petitioner.

2. Mr.M.Jothi Basu, learned counsel appearing for the petitioner submits that the petitioner's husband served as a Night Watchman in the Panchayat Union Office, Thirumangalam Panchayat Union and died on 26.11.2005. The petitioner's husband, while in service, expired leaving the petitioner and her son. The petitioner has applied for the terminal benefits, family pension, death-cum-retirement benefits of her husband. One Thavamani has raised an objection that she is also the legal heir of the deceased employee Sundarraaj. Therefore, the petitioner has filed a suit before the District Munsif Court, Thirumangalam in O.S. No. 49 of 2006 and the same was decreed by judgment and decree dated 29.07.2011.

3. In the meantime, the said Thavamani, claiming to be the second wife of the deceased employee Sundarraaj, has also filed a suit in O.S. No. 350 of 2008 and the same was dismissed for default on 24.01.2011. Thereafter, she made a representation along with the judgement on 28.12.2011 and also obtained a legal heir certificate from the Tahsildar, Thirumangalam, on 27.09.2012. Even thereafter, the petitioner was not furnished with the terminal benefits and therefore, she was constrained to approach this Court by filing a Writ Petition in W.P. No. 4245 of 2013 and this Court, by order dated 09.04.2013, directed the fifth respondent to dispose the petitioner's representation dated 03.10.2012 within a period of eight weeks from the date of receipt of a copy of that order. Thereafter, only on 01.08.2016, the Department of Rural Development (Audits) has sanctioned a sum of Rs.5,87,780/- towards the terminal benefits due to the petitioner and the monthly pension of sum of Rs.1,275/- was also sanctioned. Thereafter, on 14.03.2017, a further sum of Rs.2,73,956/- was sanctioned as death-cum-retirement gratuity and arrears of pension from 27.11.2005 to 04.10.2011 was also sanctioned.

4. The grievances of the petitioner is that though the petitioner has obtained a decree in the year 2011 and the fifth respondent has also recommended on 28.12.2011, the third respondent has delayed the payment of retirement benefits and therefore, she is entitled for interest with effect from 28.12.2011, on which date, the fifth respondent sent the proposal to the third respondent.



5. Mr.A.Kannan, learned Additional Government Pleader appearing for the respondents submits that in view of the several litigations pending in this issue, the respondents were not in a position to pay the terminal benefits to the petitioner and it is not intentional. Though the husband of the petitioner died in the year 2005, there were two rival claims and the petitioner has also filed a Civil Suit in the year 2006 and the same was decreed only in the year 2011. The another woman, who claims right over the terminal benefits, has also filed the Suit in O.S. No. 350 of 2008 and the same was also pending till 24.01.2011. Therefore, in view of the multiple litigations, the respondents were not in a position to disburse the amount in time.

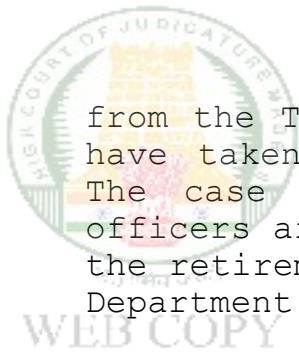
6. This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

7. It is an admitted fact that the petitioner's husband died in the year 2005 and her name is also mentioned as nominee in the Service Register. However, there was a claim from another woman. Therefore, the authorities has suggested the petitioner to approach the competent civil Court for appropriate orders. The petitioner has also filed a suit before the District Munsif Court in O.S. No. 49 of 2006 and the said suit was also decreed in favour of the petitioner on 29.07.2011. The another Suit filed by the another claimant in O.S. No. 350 of 2008 was also dismissed on 24.01.2011.

8. Based on these developments and the orders of the Civil Court, the fifth respondent has also made a recommendation to the third respondent for disbursal of the retirement benefits due to the petitioner on 28.12.2011. However, the same was processed only on 01.08.2016, where the part amount was paid and the remaining amount was paid only on 14.03.2017.

9. The learned Additional Government Pleader given an explanation that there were two legal heir certificates, one was submitted by the petitioner and another was submitted by the another claimant. Therefore, the respondents requested the legal heirs to get a legal certificate from the Competent Authority and that was obtained by the petitioner only in the year 2012. Therefore, the respondents processed the application and granted the relief in the year 2016. This explanation offered by the respondents have not been accepted. The issue involved in the Civil Suit itself is for declaring who is the legal heir of the deceased employee Sundarraaj. The issue was already decided by the Competent Civil Court on 29.07.2011 and even before that, the claim of other claimant was rejected by the Civil Court in O.S. No. 350 of 2008 on 24.01.2011.

10. Based on the orders of the Civil Court, the fifth respondent has made a proposal on 28.12.2011. Even then it appears that they have insisted the legal heir certificate and the legal



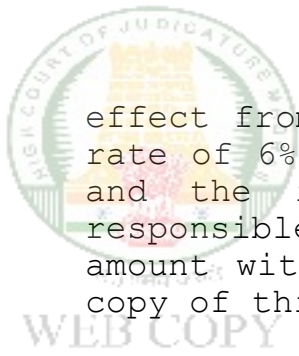
from the Tahsildar, Thirumangalam. Even thereafter, the respondents have taken considerable time to disburse the retirement benefits. The case espousing the manner in which some of the Government officers are functioning. The Department was kind enough to disburse the retirement benefits to a widow of an employee, who served in the Department with considerable delay.

11. After obtaining the decree from the Competent Civil Court, it was also recommended by the fifth respondent that the third respondent has not taken any initiative and therefore, the petitioner was constrained to file W.P. No. 4245 of 2013 and this Court by order dated 09.04.2013 directed the respondents to make payment and to consider the representation of the petitioner dated 03.10.2012 within a period of eight weeks from the date of receipt of a copy of this order. Even then the amount were not disbursed as directed by this Court in W.P. No. 4245 of 2013 and the petitioner is a poor widow was not in a position to approach the Court of Law for the violation of the orders of the Court. The part amount was settled only on 01.08.2016 and the remaining amount was settled on 14.03.2017. Therefore, the conduct of the third respondent amounts to contempt and in order to prevent any such further incident in the near future, this Court is inclined to allow the Writ Petition with exemplary cost.

12. It is settled law that the employer is liable to settle the retirement benefits without any delay and the belated payment is liable to be compensated by way of interest for the belated payment. In this regard, the Hon'ble Apex Court in ***S.K.Dua vs. State of Haryana*** reported in **2008 (3) SCC 44**, has held as follows:

"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 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 living even without issuing notice to the respondents."

13. Accordingly the Writ Petition is allowed with a cost of Rs.25,000/- (Rupees Twenty Five Thousand Only). The respondents shall pay interest to the belated payment on terminal benefits with



effect from 09.06.2013 till the payment of terminal benefits at the rate of 6%. The Department is at liberty to recover the cost amount and the interest amount from the concerned employee, who is responsible for the delay. The first respondent shall disburse the amount within a period of six weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(Crl Side)

/TRUE COPY/

/ /2022

Sub Assistant Registrar(CS)

vji

To

1. The Secretary to Government,
The state of Tamil Nadu,
Department of Rural Development,
4th Floor, St.George,
Chennai - 600 108.
2. The Director,
Department of Rural Development (Audit),
Kurazhagam, 4th Floor,
Chennai - 600 108.
3. The Director,
Local Fund Audit,
4th Floor, Nandhanam,
Chennai - 600 035.
4. The District Collector,
Madurai District,
Madurai.
5. The Commissioner,
Thirumangalam Panchayat Union,
Madurai District.

+1 CC to M/s.M.JOTHI BASU, Advocate (SR-3284[F] dated 01/02/2022)

+1 CC to M/s.SPL.GP (SR-3353[F] dated 01/02/2022)

WP. (MD) . 11373 of 2021
31.01.2022

MK/18.03.2022/5P/8C