



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2022

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.12344 of 2021

P.Thuraipandian

... Petitioner

Vs.

1.The District Educational Officer,
O/o. District Education Office,
P.W.D.Nagercoil,
Kanyakumari District

2.The Secretary,
S.M.R.V. Higher Secondary School,
Vadasery, Nagercoil.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Moo.Mu.No.430/Aa1/2013 dated 26.04.2021 on the file of the first respondent and quash the same as illegal and for a consequential direction to the respondents to pay the petitioner towards interest @ 12% per annum for the belated payment of retirement benefits from the date of retirement of the petitioner within the time period stipulated by this Court.

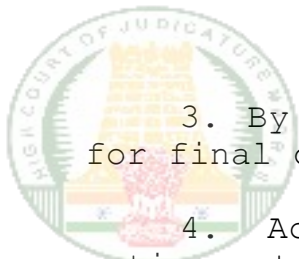
For Petitioner :Mr.T.Aswin Rajasimman for Mr.T.Lajapathi Roy

For Respondent :Mr.A.Kannan, AGP for R1

ORDER

This Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the records pertaining to the impugned order in Moo.Mu.No.430/Aa1/2013 dated 26.04.2021 on the file of the first respondent and quash the same as illegal and for a consequential direction to the respondents to pay the petitioner towards interest @ 12% per annum for the belated payment of retirement benefits from the date of retirement of the petitioner within the time period stipulated by this Court.

2. Heard Mr.T.Aswin Rajasimman for Mr. T.Lajapathi Roy, learned counsel appearing for the petitioner and Mr. A.Kannan, learned Additional Government Pleader appearing for the first respondent



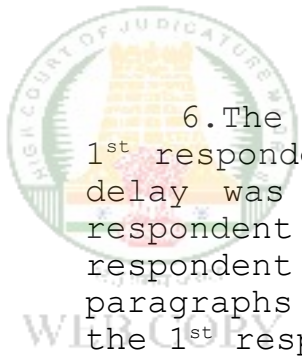
3. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

4. According to the petitioner, he opted for voluntary retirement from service and accordingly, he retired from service on 31.05.2010 and since the petitioner was not paid arrears of salary and pensionary benefits, he approached this Court by way of a Writ Petition in W.P.(MD) No.13250 of 2010 for a Mandamus, to direct the respondents to make payment of all the arrears of salary and pensionary benefits payable to the petitioner along with interest from the date on which, the petitioner is entitled to receive the same. By order, dated 25.06.2019, this Court while disposing the said Writ Petition, has observed as under:

"3. The learned counsel for the writ petitioner states that there was a delay of seven years in settling the terminal and pensionary benefits of the writ petitioner and the delay was occurred on account of the respondents and not at the instance of the writ petitioner. It is contended that the employee is entitled for interest in respect of the belated settlement of the terminal benefits. This being the factum, the respondents are bound to pay interest as applicable and with reference to the rules in force in respect of the belated settlement of terminal and pensionary benefits. In this regard, the writ petitioner is directed to submit a fresh representation setting out the entire facts and details and the period of delay caused for the settlement of terminal and pensionary benefits, within a period of four weeks from the date of receipt of a copy of this order. On receipt of such representation, the respondents are directed to consider the same with reference to the rules in force and pass orders on merits and in accordance with law regarding the claim of the writ petitioner for payment of interest for the belated settlement of terminal and pensionary benefits, within a period of twelve weeks thereafter.

4. Accordingly, the writ petition stands disposed of. No costs."

5. The learned counsel for the petitioner would submit that pursuant to the above order, the petitioner made a detailed representation on 18.12.2019, however, the same was not considered by the respondents, which prompted the petitioner to issue contempt notice dated 01.03.2021. Later, by proceedings dated 26.04.2021, the 1st respondent rejected the claim of the petitioner on the ground that it was only the administrative delay and not on the part of the 1st respondent and hence, the petitioner is not entitled to the interest on the belated payment. Challenging the same, the petitioner has come forward with the present Writ Petition.



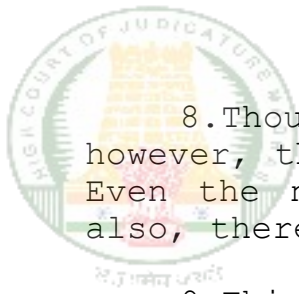
6.The learned Additional Government Pleader appearing for the 1st respondent would submit that due to only administrative reasons, delay was caused and there is no delay on the part of the 1st respondent since it because of the delay on the part of the 2nd respondent in submitting the proposals. He would also refer to paragraphs 5, 8 and 9 of the counter affidavit filed on behalf of the 1st respondent, which are extracted as under:

'5.It is submitted that the School Agency took disciplinary action on the petitioner in the year 2005-2006 and was placed under suspension. In these circumstances, the petitioner decided to go on voluntary retirement on 31.05.2010. The proposals for sanction of pensionary benefits were received from the school on 16.03.2021 and was forwarded to the Accountant General, Chennai.

8.It is submitted that the petitioner himself having strained relationship with the school management. The department was in his side and passed orders taking into the welfare of the petitioner as admitted by himself. The averments made in paras.5 to 9 are the internal conflict between the school and the petitioner. However, the Department ordered to treat all the periods of suspension and leave periods as duty period and all monetary benefits were ordered to be given to the petitioner. Yet he filed writ petition and the final order was received only in the year 2019. The petitioner as well as the school authorities were solely responsible for the delay caused and this Department cannot shoulder any irresponsibility for the delay caused by them. The delay is due to administrative reasons and for which no interest is payable.

9.It is submitted in view of the above reasons and in the circumstances detailed above the delay has been caused only due to the strained relationship between the school management and the petitioner and for which the department cannot shoulder responsibilities. The Department has taken quick action in settling the retirement benefits as and when is received from the second respondent. The prayer of the petitioner to claim interest for the belated payment from this respondent is not sustainable in law and the writ petition is not maintainable in law and is liable to be dismissed''.

7.With these averments, the learned Addl.Government Pleader sought for dismissal of the Writ Petition.



8. Though the 2nd respondent is represented through a counsel, however, there is no representation on behalf of the 2nd respondent. Even the name of the 2nd respondent is printed in the cause list also, there is no representation on behalf of the 2nd respondent.

9. This Court paid its anxious consideration to the rival submissions made by the learned counsel and perused the materials placed on record.

10. Admittedly, the petitioner retired from service on 31.05.2010, however, his retiral benefits were settled only in the year 2021. According to the 1st respondent, there is absolutely no delay on the part of the 1st respondent since the proposals for sanction of pensionary benefits were received by the school/2nd respondent only in the year 2021, i.e. on 16.03.2021. On receipt of the said pension proposals, the same were immediately forwarded to the Accountant General, Chennai and settled the pensionary benefits to the petitioner. In the earlier Writ Petition, this Court also observed that there was a delay of seven years in settling the terminal and pensionary benefits of the writ petitioner and the delay was occurred on account of the respondents and not at the instance of the writ petitioner and as such, the respondents are bound to pay interest as applicable and with reference to the rules in force in respect of the belated settlement of terminal and pensionary benefits.

11. 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."



12. Following the same, in a similar issue, a Division Bench of this Court, in W.A.(MD)No.403 of 2010, etc. batch, vide common order dated 04.07.2014, has held as follows:

"5. even though there is no provision in the Tamil Nadu State Transport Corporation Employees Pension Fund for payment of interest, cannot stand in the light of the law laid down by the Supreme Court in S.K.Dua v. State of Haryana and another, reported in (2008) 3 SCC 44. As a matter of fact, the Rules do not contemplate belated payment of retirement benefits. The Rules contemplate prompt payment. When the Rules contemplate prompt payment and not belated payment, the Rules will not contain a provision for payment of interest. The Pension Fund which was created as a Trust by the Corporation was supposed to act in trust for the employees' benefit. If the Trust could not make payments within the time stipulated, then, irrespective of whether there is any provision for payment of interest or not, the Corporation is obliged to make payment."

The Division Bench has also fixed the rate of interest at 6% p.a.

In the light of the above, the Writ Petition is allowed and the 1st respondent is directed to pay interest for the belated payment of retirement benefits at the rate of 6% p.a., from the date of retirement till the date of actual disbursement, within a period of six months from the date of receipt of a copy of this order. However, taking note of the submission made by the learned Addl.Government Pleader that there was no delay on the part of the 1st respondent and it was only because the 2nd respondent sent the pension proposals belatedly, it is made clear that it is open to the 1st respondent to recover the amount paid towards belated payment from the 2nd respondent. No costs.

Sd/-

Assistant Registrar (AD II)

// True Copy //

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The District Educational Officer,
O/o. District Education Office,
P.W.D.Nagercoil,
Kanyakumari District

2.The Secretary,
S.M.R.V. Higher Secondary School,
Vadasery, Nagercoil.

+1 CC to M/s.B.P.RATHINA PRAKASH, Advocate (SR-723[F] dated
07/01/2022)

+1 CC to M/s.SPL.GP (SR-798[F] dated 07/01/2022)

W.P (MD) No.12344 of 2021
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MGJ(08.02.2022) 6P 5C