



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)Nos.2771 & 2772 of 2015

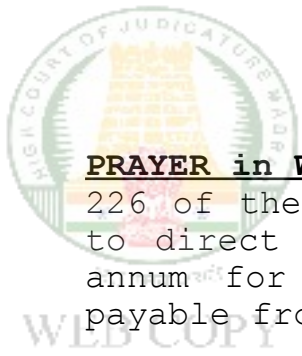
M.Rajagopal

... Petitioner (In both cases)

VS

1. Mahatma Gandhi Memorial TB
Sanatorium Hospital,
Administrated by Board of Trustees,
represented by Ex-Officio Chairman
and District Collector,
Thanjavur.
2. The Administrative Officer,
Mahatma Gandhi Memorial TB
Sanatorium Hospital,
Sengipatti, Thanjavur,
Thanjavur District.
3. The Medical Superintendent,
Mahatma Gandhi Memorial TB
Sanatorium Hospital,
Thanjavur.
4. The State of Tamil Nadu,
represented by its Secretary to Government,
Health Department,
Fort St.George, Chennai - 9. ... Respondents (In both cases)

PRAYER in W.P. (MD)No.2771 of 2015: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order passed by the second respondent in Na.Ka.No. 74/209/Aa1 dated 11.07.2014, quash the same and consequently, direct the respondents to allow and permit the petitioner for encashment of earned leave salary to him for 143 days instead of 35 days and to pay the difference in leave salary together with interest at the rate of 12% per annum payable from 31.10.2008 to till the date of actual payment and further directing the respondents to sanction and pay him unearned leave salary on private affairs for the period of 90 days.



PRAYER in W.P. (MD)No.2772 of 2015: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to pay interest at the rate of 12% per annum for the belated settlement of gratuity to the petitioner payable from 31.10.2008 to 04.05.2012.

(In both cases)

For Petitioner : Mr.A.Rahul

For Respondents : Mrs.D.Farjana Ghoshia
Special Government Pleader

COMMON ORDER

This Writ Petition in W.P.(MD)No.2771 of 2015 is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order, dated 11.07.2014 and consequently, direct the respondents to promote the petitioner for enhancement of earned leave salary for 143 days instead of 35 days and pay the difference in leave salary together with interest at 12% per annum from 31.10.2008 till the date of actual payment and direct the respondents to sanction and pay him unearned leave salary on private affairs for a period of 90 days.

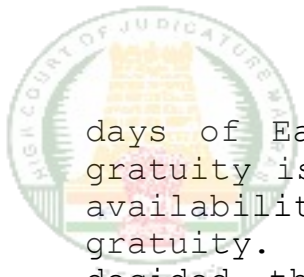
2. This Writ Petition in W.P.(MD)No.2772 of 2015 is filed for issuance of a Writ of Mandamus, directing the respondents to pay interest at the rate of 12% interest for the belated settlement of gratuity to the petitioner payable from 31.10.2008 to 04.05.2012.

3. The brief facts of the case are that the petitioner joined the service in the first respondent Hospital as Male Nursing Assistant on 03.03.1971. The petitioner was dismissed from service on 13.09.1998 and the same was challenged in W.P.(MD)No.19325 of 1998 before the Principal Seat of High Court. On 01.07.2005, this Court allowed the writ petition stating that there is a violation of principles of natural justice and directed the respondents to reinstate with continuity of service without backwages. The petitioner was reinstated on 16.09.2005 and the petitioner attained superannuation on 31.10.2008. The respondents delayed in paying the gratuity of Rs.98,650/- (Rupees Ninety Eight Thousand Six Hundred and Fifty only), encashment of surrender leave salary of Rs.36,200/- (Rupees Thirty Six Thousand and Two Hundred only) and other attendant benefits. The petitioner submitted a representation on 09.02.2009 and 20.04.2009 and then had filed W.P.(MD)No.3780 of 2009 and this Court directed the respondents to consider the representation on merits and disburse the retirement benefits within a period of six weeks.



4. The first and third respondents have filed a writ appeal in W.A.(MD)No.56 of 2010 and the same was dismissed on 28.01.2010. Thereafter, the petitioner has filed a contempt petition in CONT.P (MD)No.465 of 2009 and the second respondent passed an order, dated 22.06.2009 rejected the request for settlements of retirement benefits and informed that the gratuity will be settled in accordance with seniority. Aggrieved over the same, the petitioner has filed a writ petition in W.P.(MD)No.5715 of 2010 to quash the order, dated 22.06.2009 and this Court, vide order, dated 23.11.2010 directed the respondents to pay the terminal benefits within eight weeks. Again, a contempt petition in CONT.P (MD) No. 218 of 2012 was filed and the same was closed giving liberty to work out the remedy. On 04.05.2012, the gratuity amount of Rs.98,632/- (Rupees Ninety Eight Thousand Six Hundred and Thirty Two only) was settled to the petitioner. For the earned leave of Rs.36,200/- (Rupees Thirty Six Thousand and Two Hundred only), the respondents have paid 1/4th of leave salary and paid only a sum of Rs.5,080/- (Rupees Five Thousand and Eighty only). The petitioner relied on Rule 45-A of Tamil Nadu Pension Rules read with G.O.Ms.No.122, Finance (Pension) Department, dated 20.02.1995 wherein gratuity carries interest of 12%, if it is paid beyond one year. The petitioner claimed unearned leave as per G.O.Ms.No.409 Finance (Pension) Department, dated 31.07.2004. Since the above benefits were not paid, the present writ petition is filed.

5. The first respondent has filed a counter affidavit stating that the respondents Institution is running by the Trustees, represented by the District Collector as Ex-Officio Chairman of the Trust. The Trust was founded under G.O. Ms. No. 2265, Public Health, dated 23.06.1949 under Section 6(1) (b) of the Charitable Endowments Act, 1890 (Central Act VI of 1890). The Trust meet all the expenditures including staff salary and hospital maintenance charges by themselves. There is no provision for paying interest of belated payment of gratuity. The Trust is running a Medical Institution, namely, Mahatma Gandhi Memorial Tuberculosis and Chest Disease Hospital, which is administered by Board of Trustees, which is service oriented Institution without any financial expectation. The Institution is not run by the Government and no Government funds are received. The Institution is run under Charity Endowments Act, 1890 and the petitioner is not a Government employee and the Tamil Nadu Pension Rules is not applicable to him. The petitioner was dismissed from service for disobedience of superiors and he was reinstated as per the orders of the Court and was allowed to retire from service on attaining superannuation. As per the Board's Resolution No.26, dated 16.12.1992 and availability of funds, 1/4th of the Earned Leave Salary to the tune of Rs.5080/- (Rupees Five Thousand and Eighty only) was paid on 23.05.2009 and a sum of Rs.98,632/- (Rupees Ninety Eight Thousand Six Hundred and Thirty Two only) being gratuity was paid on 04.05.2012. Hence the petitioner is eligible only for 35



days of Earned leave (i.e., 1/4th of 143 days). As far as the gratuity is concerned, the same was paid according to seniority and availability of funds and there is no delay in settling the gratuity. In Board's Resolution No.9, dated 06.01.1990, it was decided that the terminal benefits such as gratuity should be settled according to seniority and availability of funds. But as per the direction of Court, the same was settled on 04.05.2012. Therefore, the entire writ petition is misconceived. The respondents are not liable to pay any interest to the petitioner and hence prayed to dismiss the writ petition.

6. Heard Mr.A.Rahul, learned Counsel appearing for the petitioner and Mrs.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents.

7. The contention of the petitioner is that the Hospital is a Government Hospital which is denied by the respondents. On perusal of the affidavit and the documents, it is seen that the Respondent, Mahatma Gandhi Memorial Tuberculosis Sanatorium Hospital was registered under Charitable Endowments Act, 1890 through G.O.Ms.No.2265, Public Health dated 23.06.1949. As per the said Government Order under Schedule 14(2) (1), the Government has delegated the powers to make rules in regard to the appointment of staffs required to assist the Board and the Committee of Management and the pay emoluments and other conditions of service for the staffs. The Trust is running the Medical Institution which is service oriented without any financial expectation. The Institution was not run either by Government or by Government funds. As per the Board's Resolution No.9 dated 06.01.1990 all the terminal benefits to the retired staffs are paid based on seniority basis and on availability of funds. However, the petitioner was paid the gratuity amount skipping the seniority, based on the Court's order on 04.05.2012. Hence the respondents contended that there is no delay at all. The respondents also submitted that the financial position of the Trust, where it has been stated that the revenue and the expenditure are more or less equal and the balance amount are paid as salary. The details of debts is stated under the head of 'Amount of arrears of settlement of Gratuity to 18 staff' members is Rs.50,05,206/- (Rupees Fifty Lakh Five Thousand Two Hundred and Six only) and the 'Amount of arrears of salaries to former Administrative officer' is Rs.1,83,049/- (Rupees One Lakh Eighty Three Thousand and Forty Nine only) and the 'Amount of arrears of settlement of salaries and Gratuity to Karumbayiarum is Rs.9,15,865/- (Rupees Nine Lakh Fifteen Thousand and Eight Hundred and Sixty Five only) and for settling the purchase of medicine is Rs.4,62,237/- (Rupees Four Lakh Sixty Two Thousand Two Hundred and Thirty Seven only). Totally the Institution is having a debt of Rs.65,66,357/- (Rupees Sixty Five Lakh Sixty Six Thousand Three Hundred and Fifty Seven only) and the balance amount is Rs.37,83,269/- (Rupees Thirty Seven Lakh Eighty Three Thousand Two



Hundred and Sixty Nine only). There is a deficit of amount, hence the respondents prayed to dismiss the writ petition. However, the petitioner submitted that the gratuity is statutory liability and in the provision itself the interest is levied for belated payment

8. Admittedly, the Hospital is a Trust, it is not run by the Government or Government funds. As far as the earned leave is concerned, the Trust has already passed a Board Resolution No.26, where it has been stated that the staffs are entitled to 1/4th of 143 days. Moreover, the Trust is in financial crunch, since the Trust is run by Special by-law / by-law. In the present case, based on the Board's resolution, the petitioner was paid only for 35 days as Earned leave. Therefore, this Court is of the considered opinion that there is no infirmity in granting 35 days as Earned leave.

9. As far the gratuity is concerned, the Act itself provides for imposition of interest for belated payment.

10. Therefore, this Court is of the considered view that the respondents are liable to pay the interest. However, the learned Government Pleader opposed levy interest, since the respondents are only Trust and it is run for philanthropy purpose especially for treating Tuberculosis. If interest is granted to one person then all the persons will start asking interest. From 1990 onwards, the staffs are paid gratuity based on the seniority list and as in when the funds are available. However, the learned Counsel for the petitioner submitted that the statue provides interest and therefore, the same ought to be paid. This Court is of the considered opinion that since the respondents are in deep financial trouble, the respondents are Trust and the Hospital is running for service motive, to meet the ends of justice this Court is modifying the amount of Rs.32,754/- (Rupees Thirty Two Thousand Seven Hundred and Fifty Four only) as Rs.20,000/- (Rupees Twenty Thousand only). The respondents are directed to pay Rs.20,000/- (Rupees Twenty Thousand only) within a period of eight weeks from the date of receipt of a copy of this order.

11. With the above direction, the writ petition in W.P.(MD) No.2771 of 2015 is disposed of and the writ petition in W.P.(MD) No.2772 of 2015 is dismissed. No costs.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2022

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. Mahatma Gandhi Memorial TB
Sanatorium Hospital,
Administred by Board of Trustees,
represented by Ex-Officio Chairman
and District Collector,
Thanjavur.
2. The Administrative Officer,
Mahatma Gandhi Memorial TB
Sanatorium Hospital,
Sengipatti, Thanjavur,
Thanjavur District.
3. The Medical Superintendent,
Mahatma Gandhi Memorial TB
Sanatorium Hospital,
Thanjavur.
4. The State of Tamil Nadu,
represented by its Secretary to Government,
Health Department,
Fort St.George, Chennai - 9.

+1 CC to M/s.SPL GP (SR-7747[F] dated 22/02/2022)

Order made in
W.P. (MD) Nos. 2771 & 2772 of 2015
21.02.2022

srr(CO)
TR(05.04.2022) 6P 6C