BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.23693 of 2022

R.Rajendran ... Petitioner

Vs.

The State of Tamil Nadu
Rep. by its Additional Chief Secretary to Government,
Co-operative, Food and Consumer Protection Department,
Secretariat,
Chennai-9. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondent to pay 18% interest for belated payment of Death Cum Retirement Gratuity in terms of Rule 45(A) of the Tamil Nadu Pension Rules, 1978 by considering the petitioner's representation dated 03.09.2022 within the period that may be stipulated by this Court.

For Petitioner : Mr.A.Nawaz Khan
for M/s.Ajmal Associates

For Respondent : Mr.M.Senthil Ayyanar
Government Advocate

ORDER

Heard the learned counsel on either side.

2. The writ petitioner retired as Deputy Registrar of Cooperative Societies. He had joined the department on 11.03.1979. He reached the age of superannuation on 30.11.2015. He was allowed to retire vide G.O.(D)No.312, Co-operation, Food and Consumer Department, dated 30.11.2015 without prejudice to the disciplinary action that may be taken against him under Tamil Nadu Pension Rules, 1978 based on the outcome of the proceedings under Section 82 of Tamil Nadu Co-operative Societies Act, 1983. Since nothing progressed thereafter, the petitioner filed W.P.(MD)No.7543 of 2017 for finalising the enquiry proceedings under Section 82 of Tamil Nadu Co-operative Societies Act, 1983. The said writ petition was disposed of on 24.04.2017. The petitioner was later informed that the surcharge proceedings as well as the criminal proceedings were dropped. However, draft charge memo had been prepared and forwarded to the Registrar of Co-operative Societies for getting his concurrence. This information was furnished to the petitioner on 13.12.2019. Since nothing took place, even after expiry of five years from the date on which the petitioner reached the age of superannuation, he filed one more Writ Petition (MD)No.13204 of 2020 for disbursement of his

pensionary and other benefits. The said writ petition was disposed of on 01.10.2020 by directing the authorities to pass order on the petitioner's representation. Pursuant to the said direction, G.O.(D)No.61, Co-operation Food and Consumer Department dated 21.04.2021 was issued and the retirement benefits was disbursed on 09.12.2021. The petitioner now seeks payment of interest on the belated disbursement.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. According to him, the petitioner must be paid interest in terms of Rule 45(A) of Tamil Nadu Pension Rules, 1978. Rule 45(A) is as follows:-

> Rule **45A. Interest on delayed payment of Gratuity.**- (1) Interest at the rate of eight per cent per annum shall be payable on the death-cum-retirement gratuity paid beyond (a) period of two months from the date of retirement of a Government servant [***]
>
> [Provided that on and from the 12th June 1987, the rate of such interest shall be as follows
>
> (a) seven per cent per annum beyond a period of three months and up to one years; and
>
> (b) ten per cent per annum beyond a period of one year;]
>
> [Provided further that on and from 20th February 1995, the rate of such interest shall be twelve percent per annum (compounded annually).
>
> Provided also that on and from 1st April 2004, the rate of such interest shall be at the rate of interest payable, on General Provident

Fund during the year of retirement of the Government servant (compounded annually)]

Provided further that no such interest shall be payable:

(a) where the institution of departmental or judicial proceeding against the retiring Government servant concerned is pending; and

(b) for the fraction of a month

[(1 -A) The period beyond which such interest is payable, shall be as follows :-

(i) in the case of a Government servant retired otherwise on superannuation and where the death-cum-retirement gratuity is withheld on account of disciplinary proceeding pending against him:

(a) three months from the date of retirement where the Government servant is exonerated of all charges and where the death-cum-retirement gratuity is paid on the conclusion of disciplinary proceedings

(b) three months from the date of death where the disciplinary proceedings are dropped on account of death of a Government servant

(c) three months from the date of issue of orders by the competent authority allowing payment of death-cum-retirement gratuity where the Government servant is not

(ii) six months from the date of retirement of a Government servant otherwise than on superannuation under Fundamental Rule 56(2) or 56(3) or rules 33, 36, 38, 39 and 42 of the Tamil Nadu Pension Rides, 1978

(iii) six months from the date of death of a Government servant while in service and where the delay is not caused on account of more than one claimant

(iv) three months from the date of issue of orders revising the emoluments where the amount of death-cum-retirement gratuity already paid is enhanced on account of revision of emoluments and

(v) six months from the date of absorption in the case of permanent absorption in the Public Sector Undertakings or Autonomous Bodies otherwise that on en mass transfer on conversion of Government department or a part thereof into Public Sector Undertakings or Autonomous Bodies.]

[(2) The Government shall be the authority competent to sanction such interest.]

4. The aforesaid Rule will apply only when a Government servant is allowed to retire on clean slate and yet, Death Cum Retirement Gratuity is not paid to him in time. In this case, the petitioner did not make a peaceful exit on the date when he reached the age of superannuation. On the other hand, he was allowed to retire without prejudice to the right of the department to initiate action under Pension Rules. Proceedings under Section 82 of the Tamil Nadu Co-operative Societies Act were also pending on the said date. Even in December 2019, when the petitioner was informed about the dropping of the criminal case as well as the surcharge proceedings, there was proposal to initiate disciplinary action against him. The petitioner was able to escape only because of the time bar of four years set out in the Pension Rules. Such an employee cannot invoke Rule 45(A) of the Tamil Nadu Pension Rules. At the same time, one aspect cannot be lost sight of. The writ petitioner reached the age of superannuation on 30.11.2015. Four years' time bar expired on

29.11.2019. The formal dropping of charges took place on 13.12.2019. The retirement benefits should have been disbursed to the writ petitioner positively by 12.02.2020. But they were disbursed only on 09.12.2021. The petitioner is entitled to interest computed in terms of Rule 45(A) of Tamil Nadu Pension Rules for the delay between 12.02.2020 & 09.12.2021. I want to make an observation here. When the nationalised banks are awarding interest at the rate of 6% per annum, it is time to bring the interest rates mentioned in the Tamil Nadu Pension Rules on par with them. It is for the finance department to take note.

5. The Writ Petition is partly allowed. No costs.

08.11.2022

Index : Yes / No
Internet : Yes/ No
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NOTE: Registry to mark a copy of this order to the Secretary to Government, Finance Department, Fort St.George, Chennai.

To

The Additional Chief Secretary to Government,
Co-operative, Food and Consumer Protection Department,
Secretariat,
Chennai-9.

G.R.SWAMINATHAN, J.

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