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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.06.2023

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THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

W.P.No. 11703 of 2013

V.Chellamuthu (Deceased)

2. S.Sivakumar

3. S.Natarajan

4. S.Meena

... Petitioners

..Vs..

1. Government of Tamil Nadu
Rep. by Secretary to Government
School Education Department
Secretariat, Chennai – 600 009.

2. The Director of School Education
College Road, Chennai 600 006.

3. The Joint Director of School Education (Personnel)
College Road, Chennai 600 006.

4. The District Educational Officer,
Nagapattinam District,
Nagapattinam.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus directing the respondents to forward



revised pension proposal to the Accountant General on the basis of the notional pay granted in the post of Desk Superintendent as per the proceedings of the third respondent in Na.Ka.No.54082/A3/E1/2011 dated 20.12.2011, for sanction by including one annual increment as on 01.10.2002 and grant interest on Death-cum-Retirement Gratuity and pensionary benefits for a period from 30.09.2002 to 05.07.2010 at the rate of 12% per annum.

For Petitioners :: Mr. R.Saseetharan

For Respondents :: Mr. K.Tippu Sulthan
Government Advocate

ORDER

The petitioner seeks interest on delayed payment of gratuity and consequential reliefs on increments since he retired on 30.09.2002 and the increments as payable on 01.10.2002.

2. Perusal of the papers would reveal that the petitioner retired on 30.09.2002. The Government did not release the gratuity to him on account of the fact that he was involved in a criminal case.



3. The petitioner seeks interest on gratuity from 01.10.2002 to 05.07.2010 when gratuity was actually sanctioned and paid. He relies on Section 45-A of the Tamil Nadu Pension Rules, 1978. The said Rules reads as follows:-

“45-A. 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.]”*

4. Under similar circumstances, the learned Single Judge of this Court had awarded interest at the rate of 6% per annum on the belated payment of the retirement benefits in W.P.(MD).No. 19424 of 2022 dated 24.08.2022.



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5. Mr.Saseetharan, learned counsel appearing for the petitioners is agreeable, if the rate of interest is fixed at 6% per annum for the payment of delayed gratuity, that is for the period 01.10.2002 to 05.07.2010.

6. The additional point he urges is that the petitioner is entitled for increment on 01.10.2002. This is on the basis of the Judgement of this Court in W.P.(MD).No. 9995 of 2016 dated 17.07.2017, which refers to Fundamental Rule 26(a).

7. As per the Fundamental Rules, in case a person has given the service of one year and the increment falls on 1st of October of that year. He will be entitled to the benefit as if he was in service as on that day.

8. In view of the above, the following directions are given:-

(i) The Government is directed to grant one increment to the petitioner, which he is entitled to 30.09.2002; and



(ii) the respondents shall pay interest at 6% per annum from 01.10.2002 to 05.07.2010 on the date of which the gratuity was actually withholding and the gratuity was paid.

9. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

10. The petitioner died on 23.01.2023, the issue on going into the question of family pension does not arise.

11. With the above direction, this Writ Petition stands allowed.

20.06.2023

vsg

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Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order

To

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Government of Tamil Nadu
School Education Department
Secretariat, Chennai – 600 009.

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Nagapattinam.

V. LAKSHMINARAYANAN, J.,



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