



WEB COPY



W.P. No. 12189 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 12189 of 2020

P.Nesarathinam

... Petitioner

-VS-

1.The Additional Chief Secretary,
Transport Department,
St.George Fort,
Chennai – 600 009.

2.The Administrator,
Tamil Nadu State Transport Corporation
Employees Post Retirement Welfare Fund Trust,
Thiruvalluvar House, Pallavan Salai,
Chennai – 600 002.

3.The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Ramakrishna Salai,
Salem – 636 007.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus directing the Respondents to pay leave encashment (Earned Leave), ERBS Pension Welfare Fund, IRT not settled and along with the interest at the rate of 18% per annum for belated payment of the Gratuity, PF, Commutation and Leave wages payable to the petitioner for his service rendered in the respondent Corporation within the stipulated time as may be fixed by this Hon'ble Court.



W.P. No. 12189 of 2020

WEB COPY

For Petitioner : Mr. N.Desinghu
For Respondents : Mr. N.Naveen Kumar
Government Advocate for R1
Mr. C.S.K.Sathish for R2
Mr. R.Babu for R3

ORDER

Heard Mr. N.Desinghu, Learned Counsel for the Petitioner, Mr. N.Naveen Kumar, Learned Government Advocate for the First Respondent, Mr. C.S.K.Sathish, Learned Counsel for the Second Respondent and Mr. R.Babu, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who retired from service of the Third Respondent on 31.05.2018, had been belatedly paid his retirement benefits, viz., gratuity, provident fund, commutation and leave wages, on 22.09.2019, and had not been paid other benefits, viz., leave encashment (earned leave), ERBS pension welfare fund and IRT. It is claimed that the Petitioner made several requests for payment of unpaid benefits and interest for delayed payment and had also sent a representation on 15.11.2019 in that regard. Since no action has been taken till date, this Writ Petition has been filed for directing the Respondents to pay



W.P. No. 12189 of 2020

the unpaid benefits and interest at the rate of 18% per annum for belated payment of gratuity, provident fund, commutation and leave salary.

3. Learned Counsel appearing for the Respondents contend that due to prevailing COVID pandemic situation, the Respondents have been facing severe financial constraints and as such, the question of paying interest for the delay in payment of terminal benefits of the Petitioner would not arise, especially when there is no legal provision in that regard.

4. Having regard to the rival contentions made by both sides, reference must, at once, be made in Section 7(3-A) of Payment of Gratuity Act, 1972, which provides that if the amount of gratuity payable to an employee within 30 days from the date of cessation of his employment is not paid, interest would have to be paid at such rate not exceeding the rate notified for long term deposits by the Central Government. The Hon'ble Supreme Court of India in ***H.Gangahanume Gowda -vs- Karnataka Agro Industries Corporation Ltd.,*** [(2003) 3 SCC 40] and ***Y.K.Singla -vs- Punjab National Bank*** [(2013) 3 SCC 472] referring to that legal provision has reiterated that there is no discretion to the employer to deny interest for delayed payment of gratuity and only exception for the same would be:-



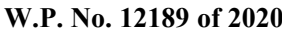
W.P. No. 12189 of 2020

(i) when the delay in the payment of gratuity is due to the fault of the employee; and

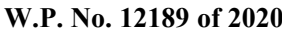
(ii) the employer has obtained permission in writing from the Controlling Authority under the Payment of Gratuity Act, 1972, for the delayed payment on this ground.

It also requires to be noticed here that though the Central Government had issued the Notification No. S.O. 847 dated 01.10.1987 fixing the rate of interest for delayed payment of gratuity under Section 7(3-A) of the Payment of Gratuity Act, 1972, at 10% per annum, no modification of the same has been made till date and this Court in ***General Manager/Administration, Tamil Nadu State Transport Corporation (Kumbakonam) Limited -vs- D.Duraidhanapal*** (Order dated 01.02.2019 in W.P. (MD) Nos. 2334 to 2357 of 2019) observed as follows:-

“3. The learned counsel appearing for the workmen contended that the orders passed in these writ petitions do not warrant any interference. His submission is that as per Section 7(3A) of the Payment of Gratuity Act, 1972, a notification was already issued by the Central Government and it provides for awarding 10% interest. He would contend that the notification that was issued as early as in 1987 is still holding good and no modification



4. I am not able to subscribe to the aforesaid submission. As rightly pointed out by the learned Standing Counsel for the management, no doubt, the special notification issued by the Central Government under Section 7(3)A of the Act stipulates awarding of 10% interest and that it has not been modified till date. But then, a notification issued under a statutory provision cannot be applied, if it would run counter to the statutory mandate. Section 7(3A) of the Act states that the employer shall pay from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by



5. It is not in dispute that for the period in question, the rate notified by the Central Government for repayment of long term deposit was between 8.7% per annum to 8.5% per annum. If the notification of the year 1987 that was originally issued under the provision is applied that would certainly run counter to the restriction laid down in Section 7(3A) of the Payment of Gratuity Act. Therefore, I am of the view that the appellate authority erred in awarding 10% interest. Considering the facts and circumstances of this case, the same is modified and reduced to 8.5% per annum."

In this backdrop, Learned Counsel for the Petitioner states that having regard to the current rate of interest on fixed deposits, the Petitioner would be satisfied if interest at the rate of 4% per annum is granted for the delayed payment of gratuity, and he has made an endorsement to that effect in the Court record.



W.P. No. 12189 of 2020

5. Coming to the leave encashment and other dues (except gratuity), neither any specific enabling provision nor any statutory prohibition for payment of interest for delayed payment has been shown by either of the parties. The Hon'ble Supreme Court of India in ***State of Jharkhand -vs- Jitendra Kiumar Srivastava*** [(2013) 12 SCC 210] has explicated that terminal benefits which have been created in favour of the employees by statute partakes the character of emoluments protected as a right to property of the concerned employee under Article 300-A of the Constitution, which cannot be arbitrarily taken away without any authority of law. Since the withholding of such terminal benefits would amount to depriving the employee of his legitimate right to make use of his property at the time when he ought to have been paid the same on attaining the age of superannuation, he would have to be compensated for such delay by awarding interest.

6. It would be useful at this juncture to refer to the decision of the Hon'ble Supreme Court of India in ***State of Kerala -vs- M.Padmanabhan Nair*** [(1985) 1 SCC 429] where it has been stated as follows:-

"1. Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable



W.P. No. 12189 of 2020

rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.”

The Hon'ble Supreme Court of India in ***Vijay L.Mehrotra -vs- State of U.P.*** [(2001) 9 SCC 687] expressed the same view in the following words:-

"3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.

4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e., 31-8-1997 till the date of payments."

It has been held by the Hon'ble Supreme Court of India in ***S.K.Dua -vs- State of Haryana*** [(2008) 3 SCC 44] as follows:-



W.P. No. 12189 of 2020

"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 limine even without issuing notice to the respondents."

The Hon'ble Supreme Court of India in **D.D. Tewari -vs- Uttar Haryana Bijli Vitran Nigam Ltd.**, [(2014) 8 SCC 894] has restated that legal position.



W.P. No. 12189 of 2020

7. In view of the foregoing discussion, the concerned authority shall

immediately make payment of

- (i) the remaining monetary and terminal benefits due to the Petitioner by 30.06.2023; and
- (ii) interest for the delayed disbursement at the current rate of 4% per annum from the date of retirement to the date on which the respective monetary and terminal benefits, viz., gratuity, provident fund, commutation, leave wages, leave encashment (earned leave), ERBS pension welfare fund and IRT, were paid, by 31.08.2023 along with working-sheet showing its calculation under written acknowledgment;

and file report of such compliance before the Registrar (Judicial) of this Court.

In the result, this Writ Petition is ordered on the aforesaid terms. No costs.

06.04.2023

2/4

ms

Index: Yes/No

Neutral Citation Case : Yes/No

Note: Issue order copy by 27.06.2023.



W.P. No. 12189 of 2020

To

WEB COPY

1. The Additional Chief Secretary,
Transport Department,
St.George Fort,
Chennai – 600 009.
2. The Administrator,
Tamil Nadu State Transport Corporation
Employees Post Retirement Welfare Fund Trust,
Thiruvalluvar House, Pallavan Salai,
Chennai – 600 002.
3. The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Ramakrishna Salai,
Salem – 636 007.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.



WEB COPY



W.P. No. 12189 of 2020

P.D. AUDIKESAVALU, J.

ms

W.P. No. 12189 of 2020

06.04.2023

2/4