IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

CORAM

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

W.P. No. 8499 of 2023

M. Rajappan … Petitioner

-vs-

1. The Managing Director,
   Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
   Vazhuthareddy,
   Villupuram – 605 602.

2. The Administrator,
   Tamil Nadu State Transport Corporation,
   Employees Post Retirement Benefit Fund Scheme,
   Thiruvalluvar House, Pallavansalai,
   Chennai – 600 002. ... 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 settle the differential gratuity, difference of leave salary, interest for belated payment of differential commutation and CRBS amount along with interest at the rate of 18%.

For Petitioner : Mr. J.Pradeep

For Respondents : Mr. R.Venkatesh Perumal (for R1)

Mr. C.S.K.Sathish (for R2)

O R D E R

Heard Mr. J.Pradeep, Learned Counsel for the Petitioner, Mr. R.Venkatesh Perumal, Learned Counsel, who takes notice for the First Respondent, and Mr. C.S.K.Sathish, Learned Counsel, who takes notice for the Second Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was working as Superintendent in the service of the First Respondent, retired from service on 30.06.2016 on attaining the age of superannuation.

3. The grievance ventilated by the Petitioner in this Writ Petition is that the entire amount of his terminal benefits, viz., gratuity, leave salary, commutation and CRBS amount, had not been paid at the time of his retirement and payment of commutation and part payment of other dues, viz., gratuity, leave salary and CRBS amount, were made belatedly without interest. In that backdrop, the Petitioner has filed this Writ Petition seeking direction to the Respondents to pay the remaining amount of terminal benefits with interest at the rate of 18% per annum from the date of his retirement till actual payment.

4. Learned Counsel appearing for the Respondents contend that due to financial constraints and subsequent COVID pandemic situation, the Respondents have not been make payment of the dues in time 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.

5. 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:-

(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 notification has been issued. His specific contention is that the*

management is not justified in placing reliance on a notification issued by the Central Government setting out the rate for repayment of long term deposit and that a special notification under Section 7(3A) of the Act is required. In as much as the notification earlier issued under this provision is still holding the field, this Court will have to necessarily abide by the same.

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 notification specify. In other words, this provision provides a upper ceiling limit for the rate of interest to be awarded. The upper ceiling limit is the rate notified by the Central Government for repayment of long term deposits.*

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.

6. 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 a catena of decisions in ***State of Kerala -vs- M.Padmanabhan Nair*** [(1985) 1 SCC 429], ***Vijay L.Mehrotra -vs- State of U.P.*** [(2001) 9 SCC 687] and ***D.D.Tewari -vs- Uttar Haryana Bijli Vitran Nigam Ltd.,*** [(2014) 8 SCC 894] has reiterated that an employee has to be compensated by way of interest for delayed payment of his terminal benefits. It has been ruled by the Hon'ble Supreme Court of India in ***S.K.Dua -vs- State of Haryana*** [(2008) 3 SCC 44] that even in the 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 inasmuch as the retiral benefits are not in the nature of bounty and needs no authority in support thereof.

7. Since it is contended that by Learned Counsel for the Petitioner that the entire amount of terminal benefits due to the Petitioner have not been paid, it is incumbent upon the Respondents to furnish a working-sheet showing the calculation for arriving at the amount of terminal benefits. If any amount of the

terminal benefits remains due, the same shall be paid to the Petitioner immediately.

8. It is represented by Learned Counsel for the Petitioner that though the Petitioner had sought interest at 18% per annum, the Petitioner would be satisfied if interest at the rate of 4% per annum is granted for delayed payment of terminal benefits.

9. In view of the foregoing discussion, the following order is passed:-

(i) the concerned authority shall furnish a working-sheet showing the calculation for arriving at the various amounts of terminal benefits due to the Petitioner immediately;

(ii) if any amount of the terminal benefits remains due, the same shall be paid to the Petitioner along with interest by 30.09.2023;

(iii) the concerned authority shall pay interest at the rate of 4% per annum for all terminal benefits due to the Petitioner from the date of his retirement on 31.05.2019 till actual payment and furnish a working-sheet showing the calculation for the same by 30.09.2023;

(iv) if the Petitioner still has any grievance to be redressed in the matter, he is not precluded from working out his rights before the proper forum in the manner recognized by law; and

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

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

17.03.2023

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Index: Yes/No
Neutral Citation: Yes/No

Note: Issue order copy by 31.07.2023.

To

1. The Managing Director,
   Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
   Vazhuthareddy,
   Villupuram – 605 602.

2. The Administrator,
   Tamil Nadu State Transport Corporation,
   Employees Post Retirement Benefit Fund Scheme,
   Thiruvalluvar House, Pallavansalai,
   Chennai – 600 002.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai.

P.D. AUDIKESAVALU, J.

skr

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