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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.06.2023

PRONOUNCED ON : 21.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No.10108 of 2020
and WMP.No.6889 of 2021

Dr.S.Bhakthavatsala Bharathi ... Petitioner

-Vs-

1. Union of India rep by
The Secretary to Government (Art & Culture)
Chief Secretariat, Puducherry.

2.The Secretary to Government (Finance)
Chief Secretariat, Puducherry.

3.The Director (Art & Culture)
Puducherry. ...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to direct the respondents to settle the Gratuity payable to the petitioner in accordance with the Section 4(1) of the Payment of Gratuity Act, 1972 and also to pay the interest in terms of Section 7 (3-A) of the Act to the amount of gratuity from the date of his superannuation till the actual date of payment and in accordance with the representation initially filed on 16.04.2018 and lastly filed on 13.07.2020 within the time limit.

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For Petitioner : Mr.P.Suresh

For Respondents : Dr.B.Ramaswamy, AGP (Pondicherry)

ORDER

This writ petition has been filed seeking to issue a Writ of Mandamus to direct the respondents to settle the Gratuity payable to the petitioner in accordance with the Section 4(1) of the Payment of Gratuity Act, 1972 and also to pay the interest in terms of Section 7 (3A) of the Act to the amount of gratuity from the date of his superannuation till the actual date of payment and in accordance with the representations filed on 16.04.2018, 23.07.2019, 29.05.2020 and 13.07.2020 within the time limit or pass such further orders as deemed fit and proper in the circumstances of the case and render justice.

2. On behalf of the respondents a counter affidavit has been filed. The petitioner filed his rejoinder.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Pondicherry) appearing for the respondents and perused the materials available on record.

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4. The learned counsel for the petitioner submits that the petitioner passed M.A.(Tamil), M.Phil and Ph.D. in Tamil. He entered into the service as "Research Fellow" in Pondicherry Institute of Linguistics and Culture, Puducherry on 24.07.1995 in the scale of pay of Rs.2200-75-2275-EB-75-2500 plus D.A. and HRA as admissible to the employees of Pondicherry Institute of Linguistics and Culture, Puducherry. The scale of pay was fixed by the Institute in accordance with the orders of the Government of Puducherry College. The petitioner retired on 30.06.2019, on attaining the age of superannuation, after rendering 24years of unblemished service. The employer (i.e) the second respondent had not sanctioned payment of gratuity as per rules in force (i.e,) Clause (i) of the sub rule (1) of rule 8 of the payment of Gratuity (Central) rules, 1972.

5. The learned counsel submits that the gratuity is a type of retirement benefit and it will be made with the intent of monetarily helping the employee after his retirement. The general principle underlying a gratuity scheme is that by service over a long period, the employee is entitled to claim a certain amount as retirement benefit.

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6. The learned counsel further submits that gratuity has to be paid to an employee for his meritorious and honest service rendered to the employer. The Gratuity is being paid at the rate of 15days wages for every completed years of service or part thereof in excess of six months. The 15days wages will be calculated by dividing the last drawn wages by 26 and multiplying the result with 15. Under Section 4(3) the maximum gratuity that is payable is fixed at Rs.20,00,000/- as per the Gratuity (Amendment) Act, 2018.

7. The learned counsel would further submit that the Pondicherry Institute of Linguistics and Culture, Puducherry is one of the institute started long ago in the year 1986 by the Government of Puducherry, under the Societies Act. It is a non-profit making educational society financed wholly and substantially by the Government of Puducherry by way of Grant-in-Aid. The learned counsel contends that the academic and non-academic staff of the Pondicherry Institute of Linguistics and Culture have fulfilled the conditions required to qualify for pension, as such they are very much eligible to exercise the pension scheme as per rules in force.

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8. The learned counsel for the petitioner submits that the retirement benefits are not settled by the respondents to the petitioner which is in violation of Articles 14 and 16 of the Constitution of India. The petitioner have made representations to the Director, Pondicherry Institute of Linguistics and Culture, Puducherry on 16.04.2018, 23.07.2019, 29.05.2020, 13.07.2020, there is no action on the said representations by the respondents. The learned counsel would submit that interest is permissible if the gratuity amount is settled by the employer after 30days from the date of retirement of the employee under Sub-section (3A) of Section 7 of the Act, 1972. Though, the petitioner retired from service on 30.06.2019 and nothing has been paid by the employer so far and even after submission of representations for number of times. The grievance of the petitioner is not addressed by the respondents and as such, the action of the respondents is utter violation of payment of Gratuity Act, 1972.

9. On the other hand, the learned Additional Government Pleader (Pondichery) appearing for the respondents submits that the functioning of Pondicherry Institute of Linguistics and Culture, Puducherry is fully reliant by the Grant-in-Aid by the Government of Puducherry. The institute

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conducts Certificate and Diploma level courses on the subjects i.e., Linguistics, Anthropology, Folkloristic and Sangam Literature. The said institute is not run on a self sustaining basis and fully depends on Grants-in-Aid from the Government of Puducherry and Department of Art and Culture is the grantee organisation. As such, the provisions of funds has to be allocated in the budget estimate and the claim of the petitioner has to be settled, after receipt of the funds from the Government.

10. The learned Additional Government Pleader (Pondichery) would submit that due to severe economic crisis and corona breakout, the Government has provided funds to meet the salary of serving employees and essential expenditure component of Pondicherry Institute of Linguistics and Culture, Puducherry and the funds were not assigned for meeting the settlement of retirement benefits.

11. The learned Additional Government Pleader (Pondichery) further contends that the Pondicherry Institute of Linguistics and Culture, Puducherry has requested for the additional funds in the revised estimate 2020-2021 to settle the retirement benefit dues and the same is being

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forwarded to the Finance Department to obtain necessary funds and to disburse the entire dues of PILC. The learned counsel submits that the gratuity amount to be settled to the petitioner will be done immediately after obtaining the funds from the finance department under relevant head of account for disbursement of retirement gratuity. Finally, the learned Additional Government Pleader (Pondicherry) submits that after receipt of the funds from the Government of Pondicherry, the petitioner claim will be settled shortly.

12. The learned counsel for the petitioner in his reply arguments, contends that the petitioner retired from service on 30.06.2019 on attaining the age of superannuation and it is the bounden duty of the employer to take action to process the papers for settling the retirement benefits six months well in advance. The respondents should have processed the retirement benefits proposals on 01.12.2018 and necessary funds should have been provided in the Budget Estimate for the year 2018-2019 or in the revised Estimate for the year 2018-2019. The learned counsel contended that the respondents totally failed to take action to get the funds from the Government in the relevant financial years and simply saying that the benefits will be

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settled after the receipt of the funds from the Government. Finally, the learned counsel for the petitioner requested the Court to issue directions to the respondents to settle the retirement benefits with statutory interest, in the interest of justice.

13. Having heard the submissions of the respective counsel and upon careful perusal of the material available on record. For proper adjudication of issue involved in the present writ petition, it is pertinent to look into the relevant provisions of payment of Gratuity Act, 1972, which are extracted herein under:-

> “4.**Payment of gratuity -** (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -
>
> (a) on his superannuation, or
>
> (b) on his retirement or resignation, or
>
> (c) on his death or disablement due to accident or disease:
>
> Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:
>
> [Provided further that in the case of death of the employee,

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gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]

Explanation. : For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he, was capable of performing before the accident or disease resulting in such disablement.

7. **Determination of the amount of gratuity**. (1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom

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the gratuity is payable. (3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), 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:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]

14. In our view, it is also necessary to look into the notification No.1/19/2013 – P&PWC dated 29.08.2014 issued by the Government of India, Department of Pension and Pensioners Welfare, New Delhi, wherein it is mentioned the procedure to be followed by the concerned department in the matter of Government servant due for retirement is extracted herein under:-

"{(1) Every Head of Department shall have a list prepared every three months, that is, on the 1st January, 1st April, 1st July and 1st October each year of all Government servants who are due to retire within the next twelve to fifteen

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months of that date.

(2)A copy of every month such list shall be supplied to the Accounts Officer concerned not later than 31st January, 30th April, 31st July or 31st October as the case may be of that year.}

(3)In the case of a Government Servant retiring for reasons other than by way of superannuation, the Head of Office shall promptly inform the Accounts Officer concerned, as soon as the fact of such retirement becomes known to him.

(4)A copy of intimation sent by the Head of Office to the Accounts Officer under sub-rule(3) shall also be endorsed to the Directorate of Estates, if the Government Servant concerned is an allottee of Government accommodation."

15. The sum and substance of the grievance of the petitioner is that he worked as research fellow in Pondicherry Institute of Linguistics and Culture, Puducherry from 24.07.1995 and rendered 24years of service and retired from service on 30.06.2019 on attaining the age of superannuation. As the respondents failed to settle the amount to be paid to the petitioner towards gratuity amount, he submitted several representations to the respondents and as there is no action on the part of the respondents, the petitioner approached this Court by filing the present writ petition.

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16. On the other hand, the respondents are not denying the service rendered by the petitioner and they are admitting that the petitioner is entitled for the gratuity amount. But due to the financial crunch, they did not receive the funds from the Government of Puducherry and could not settle the claim of the petitioner. The respondent stated that after receipt of the funds from the Government of Puducherry, the petitioner grievance will be settled immediately.

17. In the back drop of the above factual position, it is clear that though the petitioner is entitled for gratuity amount payable to the petitioner under the provisions of payment of Gratuity Act, 1972, the respondents did not paid the same to the petitioner, though the petitioner retired from service on 30.06.2019, on attaining the age of superannuation.

18. As per the instructions issued by the Government of India on 29.08.2014 (as cited supra) every Head of Department shall have a list prepared every three months, that is, on the 1st January, 1st April, 1st July and 1st October each year of all Government servants who are due to retire within the next twelve to fifteen months of that date. It is the duty of the employer to

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send the quarterly report to the respective Government servant who are due to retire.

19. In the present case, the petitioner retired from service on 30.06.2019, as such it is the duty of the respondents to send the report to the finance department for the purpose of settling the retirement benefits before six months of the retirement. If such proposal is sent six months prior to the retirement of the Government employees, the finance department of the concerned Government may be in a position for earmarking the funds. But, in the present case, it appears that no such proposal is made seeking necessary funds to be provided in the budget estimate for 2018-2019 or in the revised estimate for the year 2018-2019. This fact is established by the contentions of the respondent. Pondicherry Institute of Linguistics and Culture, Puducherry has requested for the additional funds and the revised estimate 2020-2021 to settle the retirement benefits due and the same is forwarded to the financial department. If such proposals are sent to the finance department in the year 2018 onwards, definitely the grievance of the petitioner may be settled a long back. Due to the inaction of the respondents in settling the retirement benefit, such as paying the gratuity amount to the

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petitioner, definitely the petitioner has suffered a lot.

20. It is true the retired employees while going to their home on the last working day, if the employer settled the retirement benefits to them on that day, it will give joy and happiness not only to the retired employees, but also to their entire family. But not settling the retirement benefit to the retired employees by the employers/respondents for years, it will cause serious hardship to the retired employees. The payment of retirement benefits to the retired employees by the respondents is not a charity. It is the legitimate right of the employee to have the retirement benefits without any unreasonable delay for his services rendered to the respondents for all those years.

21. For these reasons, this Court has no hesitation to hold that the action of the respondents in not settling the benefit of payment of gratuity after the retirement of the petitioner is illegal and unjust.

22. Section 7(3) of payment of Gratuity Act, 1972 provides that the employer shall arrange to pay the amount of gratuity, within thirty days from the date it becomes payable to the person to whom the Gratuity is payable.

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23. In Section 7(3-A) it is provided that if the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid with simple interest.

24. In the present case, admittedly, the petitioner retired from service on 30.06.2019, within 30days thereafter, the respondents have to pay the amount of gratuity to the petitioner. It is an admitted fact, that the gratuity amount is not paid, even after submission of several representations by the petitioner. It appears that as on date also the gratuity amount is not paid to the petitioner.

25. Under these circumstances, it is held that the petitioner is entitled for the interest as per Section 7(3-A) of the payment of Gratuity Act, 1972.

26. For the above mentioned reasons, this writ petition is disposed of and pass the following orders :-

(i) the action of the respondents in not making the payment of gratuity

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to the petitioner is declared as illegal, arbitrary, unjust and contrary to the provisions of payment of Gratuity Act, 1972.

(ii) consequently, the respondents are directed to pay the Gratuity amount payable to the petitioner forthwith along with the interest applicable in the year 2019, as notified by the Central Government.

(iii) the respondents shall pay a sum of Rs.10,000/- towards costs towards legal expenses to the petitioner for dragging the petitioner into litigation after his retirement.

27. Consequently, connected miscellaneous petitions pending, if any, shall stand closed.

21.06.2023

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Index: Yes/No
Speaking order/Non Speaking order
Neutral Citation: Yes/No

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To

1. Union of India rep by
The Secretary to Government (Art & Culture)
Chief Secretariat, Puducherry.

2.The Secretary to Government (Finance)
Chief Secretariat, Puducherry.

3.The Director (Art & Culture)
Puducherry.

BATTU DEVANAND, J.

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Pre-Delivery Order in

W.P.No.10108 of 2020

21.06.2023.

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