



W.P.(MD).No.7133 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.7133 of 2018

T.Jeyachadran

... Petitioner

Vs.

- 1.The General Manager (Personnel),
The Oriental Insurance Company Ltd.,
Head Office, A-25/27, Asaf Ali Road,
New Delhi – 110 002.
- 2.The Chief Regional Manager,
The Oriental Insurance Company Ltd.,
Regional Office, No:78, T.P.K.Road,
Andalpuram, Madurai – 1.
- 3.The Senior Divisional Manager,
The Oriental Insurance Company Ltd.,
Divisional Office-II, No:16, K.J.R.Complex,
North Veli Street, Madurai-1.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings issued by the 3rd respondent/ Senior Divisional Manager in his letter dated 01.06.2017 and quash the same and consequently direct the 2nd respondent/ Chief Regional Manager to release



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the gratuity, full pension and also commutation of pension with an applicable and appropriate interest thereon in view of the Deputy General Manager Circular, Deptt: Personnel dated 22.02.2017 within the stipulated time as fixed by this Court.

For Petitioner : Mr.C.Masilamani

For Respondents : Mr.C.Karthik

ORDER

This petition is filed to quash the impugned order with a consequential prayer to release gratuity, full pension and commutation with an applicable and appropriate rate of interest.

2. Pending writ petition, respondents have paid the gratuity, full pension and commutation pension. However, the learned counsel for the petitioner submitted that the respondents have not paid interest. Hence, prayed that the present writ petition may be heard for interest for gratuity alone.

3. The petitioner has also submitted a representation to the respondents dated 06.08.2020, seeking interest for commutation of pension as well as gratuity. For commutation of pension, the same will be disbursed from the date



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of application of the petitioner alone. It will not carry any interest. Therefore, this Court is declining the interest for commutation of pension.

4. As far as the gratuity is concerned, the petitioner is entitled to interest. In the present case, the petitioner was facing departmental proceedings as well as criminal proceedings. The petitioner was acquitted from the criminal proceedings on 29.03.2012 and attained superannuation on 28.02.2017.

5. The learned counsel for the respondents submitted that subsequently, CBI has preferred an appeal against the criminal Court's order and the same was dismissed and the petitioner was acquitted on 12.02.2019. Thereafter, the petitioner was paid the terminal benefits on 13.12.2019. Therefore, the petitioner is not entitled to any interest, since from the date of acquittal, the petitioner's papers were processed and the entire terminal benefits was paid. The learned counsel appearing for the respondents further submitted that the petitioner has not challenged the original order, but has challenged the consequential order. The original order declining the claim of the petitioner was issued on 09.05.2017 and subsequent order was issued on 01.06.2017. Moreover, there is an alternative appellate remedy to the petitioner to prefer



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appeal before the higher authority. Therefore, the respondents prayed to reject the claim of the petitioner.

6. Considering the rival submissions, this Court is of the considered opinion that from the date of acquittal in the appellate proceedings, dated 12.02.2019 onwards, the petitioner is entitled to interest until the gratuity is paid.

7. However, from the date of superannuation till the acquittal in the appellate proceedings, the respondents have special regulations under the General Insurance (Employees) Pension Scheme, 1995. Under clause 45 sub-clause (2) of the said scheme, it has been stated that in such cases, gratuity shall not be paid to such an employee until the conclusion of the proceedings against him. The gratuity shall be paid to him on conclusion of the proceedings subject to the decision of the proceedings. The relevant portion is extracted hereunder:

“(45) Provisional pension.-

(1) An employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued, a provisional pension equal to the maximum pension which would have been



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admissible to him, would be allowed subject to adjustment against final retirement benefits sanctioned to him, upon conclusion of the proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld etc., either permanently or for a specified period.

(2) In such cases the gratuity shall not be paid to such an employee until the conclusion of the proceedings against him. The gratuity shall be paid to him on conclusion of the proceedings subject to the decision of the proceedings. Any recoveries to be made from an employee shall be adjusted against the amount of gratuity payable.”

8. However, the learned counsel appearing for the petitioner relied on the payment of gratuity Act as well as subsequent circular issued by the respondents. Under Section 73 A of Payment of Gratuity Act, it has been stated if any payment is kept pending, the employer ought to get permission from the controlling authority for delayed payment. The respondents have issued Circular, dated 22.02.2017, directing the authorities to obtain permission from the controlling authorities, if there is any delayed payment of gratuity. Since the circular was issued just one week prior to the petitioner's superannuation, the implementation of such circular has been delayed. Admittedly the respondents have not obtained any permission from the authority to pay the amount belatedly. Therefore, this Court is inclined to grant interest for this portion also.



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Hence, this Court is passing the following order:

(i) For the delayed payment from 29.03.2017 to 11.02.2019, the 2nd respondent is directed to pay 6% interest.

(ii) For the period from 12.02.2019 to 12.12.2019, the 2nd respondent is directed to pay 8% interest.

(iii) The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

9. With the above direction, this Writ Petition stands allowed. No costs.

23.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

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To

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S.SRIMATHY, J.

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