



W.P.(MD) No.12188 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 19.09.2023

ORDERS PRONOUNCED ON : 20.10.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.12188 of 2018

G.Natarajan

... Petitioner

Vs.

1.The Headmaster,
Government (Boys) Higher Secondary School,
Y.Othakkadai – 625 107,
Madurai District.

2.The Principal Accountant General (A&E),
Tamil Nadu,
Chennai-600 018.

3.The Accounts Officer (Audit),
School Education Department,
Madurai-625 002.

4.The Chief Educational Officer,
Madurai-625 002.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records of the



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respondent made in proceedings number NIL dated 05.02.2018 and quash the same and direct the respondents to pay interest at the rate of 12% on the belated payment of retiral benefits to the petitioner such as Pension, Commutation of Pension, Death-Cum-Retirement Gratuity, Encashment of Earned Leave and Unearned Leave Salary from the date when it actually became due till the date of actual settlement within a stipulated period.

For Petitioner	:	Mr.B.Alagarsamy
For RR1, 3 & 4	:	Mr.V.Nirmal Kumar Government Advocate
For R2	:	Mr.P.Gunasekaran

ORDER

This writ petition is filed to quash the proceedings of the 1st respondent dated 05.02.2018 and direct the respondents to pay interest at the rate of 12% on the belated payment of retiral benefits to the petitioner such as Pension, Commutation of Pension, Death-Cum-Retirement Gratuity, Encashment of Earned Leave and Unearned Leave Salary from the date when it actually became due till the date of actual settlement within a stipulated period.



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2. Heard Mr.B.Alagarsamy, learned counsel for the petitioner, Mr.V.Nirmal Kumar, learned Government Advocate appearing for Respondents No.1, 3 and 4 and Mr.P.Gunasekaran, learned counsel appearing for the 2nd respondent and perused the record.

3. Learned counsel for the petitioner submits that the petitioner was appointed as Drawing Master on 29.07.1982 according to prevailing rules in the year 1982 and his services were regularised with effect from 29.07.1982 and his probation as Drawing Master was declared with effect from 28.07.1984. Selection Grade and Special Grade were awarded to the petitioner with effect from 28.07.1992 and 29.07.2002 respectively after completion of 10/20 years of service in the same post and his salary in the cadre of Special Grade Drawing Master was paid up to his superannuation on 30.06.2010 and is drawing pension at the District Treasury, Madurai.

4. The 1st respondent had issued proceedings in Rc.No.218/A1/07 dated 09.11.2009, wherein it is stated that there is an audit objection by the



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3rd respondent regarding appointment of the petitioner and the same was served on him only on 16.06.2010. Further, the 4th respondent had issued proceedings in R.C.No.5844/A6/2010, dated 28.06.2010 for his re-employment from 01.07.2010 to 31.05.2011 after his retirement on 30.06.2010, wherein it is stated among other things that the pay for the re-employment period and retiral benefits may be paid after rectification of audit objections and the said proceedings was communicated by the 1st respondent in his Rc.No.172/A1/10, dated 01.07.2010.

5. Learned counsel for the petitioner further submits that the 1st respondent had sent the petitioner's pension proposals to the 2nd respondent without dropping the audit objection raised by the 3rd respondent and the 2nd respondent in PEN.20/4/TRD/3169/10-11/ADK, dated 07.07.2010 had returned the petitioner's pension proposals submitted by the 1st respondent stating that on receipt of reply for audit objection, further action will be taken.



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6. The petitioner submitted a representation dated 18.08.2010 to the 4th respondent through the 1st respondent requesting to drop the audit objections stating that the Government Order issued in the year 1986 cannot be applied retrospectively for the appointment made in the year 1982. However, the 1st respondent vide R.C.No.172/A1/2010, dated 29.01.2011, reduced the petitioner's salary and ordered that the excess amount paid should be remitted in the treasury and the challan for such remittance should be submitted, then only the pension proposals would be forwarded to the 2nd respondent for authorisation.

7. In the meantime, the 4th respondent in his proceedings in K.Dis.No.9076/A6/2010, dated 15.02.2011, stated that the petitioner's appointment is in order according to the rules in force at the relevant period and directed the 1st respondent to take necessary action to drop the audit objection raised by the 3rd respondent and settle the retiral benefits expeditiously.



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8. However, aggrieved by the order of the 1st respondent in R.C.No.172/A1/2010, dated 29.01.2011, the petitioner filed a writ petition in W.P.(MD) No.5037 of 2011 and obtained an order of interim stay on 28.04.2011. On receipt of the order of interim stay, the petitioner made a representation dated 05.05.2011 to the 1st respondent to take necessary action to settle the reitral benefits at an early date. Pending writ petition, the 2nd respondent requested the 1st respondent to comply with the order of this Court. In turn, the 1st respondent had sent a letter dated 25.07.2011 to the 2nd respondent stating that the audit objections were dropped. However, the 2nd respondent *vide* his letter dated 17.10.2011, had authorised the petitioner's pension, commutation of pension and DCRG in the reduced rate. Further, the 1st respondent *vide* his letter in RC.No.38/A1/2012, addressed to the 2nd respondent, refixed the petitioner's pay and requested him to authorise the petitioner's pension proposals at an early date, since there is a contempt petition. The 2nd respondent thereafter authorised the petitioner's revised pension stating that the pensionary benefits paid already will be adjusted from and out of the revised benefits now admitted.



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9. On 09.11.2017, this Court disposed of W.P.(MD) No.5037 of 2011 with liberty to the petitioner to pursue his remedies for claiming interest for the delayed payment of terminal benefits from the concerned authorities.

10. Learned counsel for the petitioner submits that though the petitioner was permitted to retire on superannuation on 30.06.2010, all his retiral benefits were paid only after inordinate delay, i.e., after three years, which caused great hardship and therefore, the petitioner made a representation to the 1st respondent on 04.01.2018 requesting to pay simple interest at the rate of 12% per annum for the belated payment of pension and other retiral benefits from the date of the petitioner's retirement namely, 30.06.2010 till the date of payment, a copy of which was also marked to the 4th respondent. But the 1st respondent *vide* the impugned reply dated 05.02.2018, rejected the petitioner's representation dated 04.01.2018.



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11. Learned counsel for the petitioner submits that the impugned order rejecting the petitioner's claim is contrary to law, illegal and unjust and prays for allowing the writ petition.

12. Learned counsel for the petitioner placed reliance on the following judgments of the Hon'ble Apex Court and this Court:

- i. State of Kerala and others vs. M.Padmanabhan Nair⁽ⁱ⁾;*
- ii. Dr.Uma Agrawal vs. State of U.P. And Another⁽ⁱⁱ⁾;*
- iii. S.K.Dua vs. State of Haryana and Another⁽ⁱⁱⁱ⁾; and*
- iv. Government of Tamil Nadu and Another vs. M.Deivasigamani*
[W.A.No.886 of 2007, dated 17.12.2008].

13. The respondents have filed counter affidavits denying the averments made in the affidavit filed in support of the writ petition.

(i) AIR 1985 SC 356
(ii) (1999) 3 SCC 438
(iii) (2008) 3 SCC 44



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14. Learned Government Advocate appearing for the Respondents No.1, 3 and 4, relying on the counter affidavits filed by the Respondents No. 1, 3 and 4 submits that only due to the objections raised by the audit department and the consequential administrative reasons, there was a delay in settling the terminal benefits of the petitioner. Further, the 2nd respondent delayed in processing the pension proposal and other administrative reasons. In fact, the writ petitioner did not challenge the audit objections raised by the third respondent.

15. Learned counsel for the 2nd respondent, relying on the counter affidavit filed by the 2nd respondent, contends that as per Government Letter No.103384/Pension/87-2, dated 07.09.1987, interest on belated payment of DCRG can be paid by the Head of Office and therefore, no authorisation from the 2nd respondent is necessary and sought dismissal of the writ petition.



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16. This Court gave anxious consideration to the submissions made by the respective counsels and carefully perused the material available on record.

17. The only issue to be considered in this writ petition is whether the petitioner is eligible for interest on belated payment of his terminal benefits or not?

18. On perusal of the entire record, it is clear that the petitioner retired as Special Grade Drawing Master on 30.06.2010. But his retirement benefits were paid only after three years of his retirement. There is no any fault on the part of the petitioner. The inordinate delay occurred in paying the retirement benefits to the petitioner is due to the erroneous decisions of the respondents. The present case is a clear example of departmental delay for their misconception about the appointment of the petitioner, which is not excusable. Undoubtedly, the petitioner would feel harassed by the respondents without granting pension, though it is not a bounty, but it is his right to have the pension after retirement.



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19. In the present case, the entire fault is with the Respondents No.1, 3 and 4 for the delay in making the payment of pension to the petitioner. As such, in our considered opinion, the petitioner is entitled for the interest for the belated payment of retirement benefits and the Respondents No.1, 3 and 4 shall pay the interest to the petitioner for the loss caused to the petitioner.

20. At this juncture, it is very apt to consider the judgment of the Hon'ble Apex Court in ***M.Padmanabhan Nair*** (*cited supra*), wherein it is held as extracted hereinunder:

“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 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.”



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21. While awarding interest in identical matter, the Hon'ble Apex Court in **Dr. Uma Agrawal** (*cited supra*), held as extracted hereinunder:

“5. ...If the Rules/instructions are followed strictly, much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. The Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the court can certainly keep in mind the time-schedule prescribed in the Rules/instructions apart from other relevant factors applicable to each case.”

22. It is also appropriate to consider the judgment of the Hon'ble Apex Court in **S.K.Dua** (*cited supra*), wherein it is held as extracted hereinunder:



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“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.”

23. A Division Bench of this Court, in ***M.Deivasigamani*** (cited *supra*), held as extracted hereinunder at Paragraph No.7:



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“7. In view of the judgment of the Supreme Court, it is now well settled that an employee is entitled to interest on belated payment of pension and other retireal benefits, even in the absence of statutory rules/administrative instructions or guidelines and he claim for interest, under Part III of the Constitution, relaying on Articles 14, 19 and 21 of the Constitution”

24. For the above said reasons and in the light of the law laid down by the Hon'ble Apex Court and this Court in identical circumstances, in the considered opinion of this Court, the petitioner is entitled for the interest for the belated payment of his retiral benefits and as such, the proceedings of the 1st respondent impugned in this writ petition is liable to be set aside.

25. Accordingly, this Writ Petition is allowed with the following directions:

- i. The proceedings of the 1st respondent dated 05.02.2018 is hereby set aside;



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- ii. The Respondents No.1, 3 and 4 shall pay interest at the rate of 12% per annum on the belated payment of retiral benefits to the petitioner from 30.06.2010 to till the date of actual payment; and
- iii. The interest shall be paid within a period of four weeks from the date of receipt of a copy of this order.

26. There shall be no order as to costs.

NCC : Yes/No

Index : Yes/No

Internet : Yes

Note : Issue order copy by 25.10.2023.

abr

20.10.2023

To

1.The Headmaster,
Government (Boys) Higher Secondary School,
Y.Othakkadai – 625 107,
Madurai District.

2.The Principal Accountant General (A&E),
Tamil Nadu, Chennai-600 018.

3.The Accounts Officer (Audit),
School Education Department,
Madurai-625 002.



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BATTU DEVANAND, J.

abr

4.The Chief Educational Officer,
Madurai-625 002.

Pre-delivery Order made in
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20.10.2023