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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.09.2023**

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P(MD) No.22180 of 2016
and
W.M.P.(MD) No.15895 of 2016

R.A. Ramachandran ...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Principal Secretary,
Department of Higher Education,
Fort St. George,
Chennai – 9.

2.The Director of collegiate Education,
O/o. The Director of collegiate Education,
9th Floor,EVK Sampath, Buildings,
College Road,
Chennai – 600 006.

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3.The Regional Joint Director of collegiate Education,
O/o. The Regional Joint Director of Collegiate Education,
Madurai Region, Shenoy Nagar,
Madurai – 625 020.

4.The Principal,
Nadar Mahajana Sangam
S.Vellaichamy Nadar College,
Nagamalai,
Madurai – 635 019. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Order in Na.Ka.No. 4474/Aa2/2015 on the file of the Respondent No.3 dated 30.03.2016 and quash the same as illegal and consequently for a direction, directing the Respondents to provide interest at the rate of 12% for the belated payment of Provident fund to the tune of Rs.8,19,621/- to the petitioner from 28.02.2011 to 23.06.2014 within the time period stipulated by this Court.

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For Petitioner : Mr.G.Karthik
for Mr.S.Rajasekar

For Respondent : Mr.V.Nirmal Kumar - for R1 to R3
Government Advocate
Mr.N.Dilip Kumar - for R4

O R D E R

This Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.4474/Aa2/2015 dated 30.03.2016 on the file of the third respondent and quash the same as illegal and for a consequential direction to the respondents to provide interest at the rate of 12% for the belated payment of Provident fund to the tune of Rs.8,19,621/- to the petitioner from 28.02.2011 to 23.06.2014 within the time period stipulated by this Court.

2. Heard Mr.G.Karthik for Mr.S.Rajasekar, learned counsel appearing for the petitioner and Mr.V.Nirmal Kumar, learned

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Government Advocate appearing for the respondents 1 to 3 and Mr.N.Dilip Kumar, learned counsel appearing for the fourth respondent.

3. According to the petitioner, he retired from service on 28.02.2011 and his service was duly extended upto 31.05.2011. Since the petitioner was not paid the provident fund, he approached this Court by way of a Writ Petition in W.P.(MD) No.1386 of 2016 for a Certiorarified Mandamus, to call for the records pertaining to the impugned order inSavehka/A1/KakaEE/Tha.Vu.Sa/2015 on the file of the fourth respondent dated 17.11.2015 and quash the same as illegal and for a consequential direction to direct the respondents to provide interest at the rate of 12% for the belated payment of Provident fund to the tune of Rs.8,19,621/- to the petitioner from 28.02.2011 to 23.06.2014 within the time period stipulated by this Court. By order, dated 22.01.2016, this Court while disposing the said Writ Petition, has observed as under:

> "3.According to the learned counsel for the petitioner, the actual authority is the third respondent, who has to decide about the payment of interest for the belated settlement of terminal benefits. Hence, he submitted that the writ petition could be disposed of

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by directing the third respondent to pass orders on the representation of the petitioner dated 25.08.2015, in the light of the decision of this Court in Government of Tamil Nadu vs. M.Deivasigamani, reported in (2009) 3 MLJ 1, which in turn relied on the Apex Court judgment in S.K.Due vs. State of Haryana, reported in (2008) 3 SCC 44, within the stipulated period.

4.In view of such a narrow prayer made during the hearing, the third respondent is directed to pass orders on the representation of the petitioner dated 25.08.2015, on merits and in accordance with law, in the light of the decision reported in (2009) 3 MLJ 1 referred to above, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, W.M.P(MD)No.1162 of 2016 is closed. "

4. The learned counsel for the petitioner would submit that pursuant to the above order, by proceedings dated 30.03.2016, the third respondent rejected the claim of the petitioner on the ground that there is no provision in the Rules to calculate interest till the date of releasing the

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money for closing the Provident Fund account and hence, the petitioner is not entitled to the interest on the belated payment. The second respondent failed to consider the same in the light of the judgment reported in 2009(3) MLJ-1. Challenging the same, the petitioner has come forward with the present Writ Petition.

5. The learned Government Advocate appearing for the respondents 1 to 3 basing on the counter affidavit filed on behalf of the official respondent contends that the proposal for the disbursement of the Provident Fund was sent by the fourth respondent on 29.04.2011. On verification, there were some defects was found and it was returned back to the fourth respondent on 29.09.2011 for rectification. Again the proposal was sent by the fourth respondent on 21.10.2011 and again the proposal was returned back to the fourth respondent on 01.12.2011 for rectification of defects. On 03.02.2012, without rectifying the defects, the fourth respondent sent proposals with same defects and thereafter, on 08.11.2013 the fourth respondent has submitted all relevant documents and thereafter, after verification of all material record and disbursed the amount of Rs.8,19,621/- as a Provident Fund to the petitioner on

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12.05.2014 and the same was credited to petitioner's account on 23.06.2014. The petitioner was retired from service on 28.02.2011 and the Provident Fund was disbursed on 12.05.2014. The delay is incurred only due to administrative reason. The fourth respondent has sent the proposal with delay. There is no infirmity or illegality in the impugned order. Moreover the petitioner ought to have approached the Appellate Authority /second respondent, if aggrieved over the order passed by the third respondent and without exhausting the alternative remedy has come forward with the present Writ Petition which is liable to be dismissed. Therefore, he sought for dismissal of the Writ Petition.

6. The learned counsel appearing for the fourth respondent basing on the counter affidavit filed by the fourth respondent contends that a delay of about 2 months from 02.12.2011 to 03.02.2012 occurred by the fourth respondent College due to various administrative reasons and the delay of about 27 months from 03.02.2012 to 12.05.2014 occurred only by the third respondent. The third respondent now improving the impugned order dated 30.03.2016 in their counter affidavit by raising a new stand that the delay occurred only due to the fourth

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respondent. The said allegation is not sustainable. The petitioner also raised the above issues only on 25.08.2015 and had not taken any steps to redress his grievance between 31.05.2011 to 12.05.2014. The prayer against the fourth respondent College for the delayed payment of petitioner's Provident Fund is liable to dismissed.

7. This Court paid its anxious consideration to the rival submissions made by the learned counsel and perused the material placed on record.

8. Admittedly, the petitioner retired from service on 31.05.2011. Though, his retiral benefits were settled in the year 2011, his Provident Fund was settled in the year 2014. According to the respondents 1 to 3, there is absolutely no delay on the part of the respondents 1 to 3, since the proposals for sanction of Provident Fund was sent by the fourth respondent with a delay and therefore, the disbursement of the Provident Fund was made on 12.05.2014.

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9. The employer is liable to settle the retirement benefits without any delay and the belated payment is liable to be compensated by way of interest for the belated payment. In this regard, the Hon'ble Apex Court in ***S.K.Dua vs. State of Haryana*** reported in ***2008 (3) SCC 44***, has held as follows:

> "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

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> opinion, the High Court was not right in dismissing the petition in living even without issuing notice to the respondents.”

10. Following the same, in a similar issue, a Division Bench of this Court, in W.A.(MD)No.403 of 2010, etc. batch, vide common order dated 04.07.2014, has held as follows:

> “5. ..... even though there is no provision in the Tamil Nadu State Transport Corporation Employees Pension Fund for payment of interest, cannot stand in the light of the law laid down by the Supreme Court in S.K.Dua v. State of Haryana and another, reported in (2008) 3 SCC 44. As a matter of fact, the Rules do not contemplate belated payment of retirement benefits. The Rules contemplate prompt payment. When the Rules contemplate prompt payment and not bleated payment, the Rules will not contain a provision for payment of interest. The Pension Fund which was created as a Trust by the Corporation was supposed to act in trust for the employees' benefit. If the Trust could not make payments within the time stipulated, then, irrespective of whether there is any provision for payment of

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interest or not, the Corporation is obliged to make payment."

The Division Bench has also fixed the rate of interest at 6% per annum.

11. In the light of the above, this Writ Petition is allowed with the following directions :

1) Directing the respondents 1 to 3 to pay interest for the belated payment of retirement benefits at the rate of 6% per annum from the date of retirement till the date of actual disbursement, within a period of six months from the date of receipt of a copy of this order;

2) However, taking note of the submission made by the learned Government Advocate that there was no delay on the part of the respondents 1 to 3 and it was only because the fourth respondent sent the pension proposals belatedly, it is made clear that it is open to the

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respondents 1 to 3 to recover the amount paid towards belated payment from the fourth respondent;

3) No costs; and

4) Consequently, connected miscellaneous petition is closed.

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

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BATTU DEVANAND, J.

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