



W.P.(MD) No.1 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 22.08.2023

ORDERS PRONOUNCED ON : 06.10.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.1 of 2017
and
W.M.P.(MD) No.1 of 2017

P.Ganesan

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep., by its Principal Secretary to Government,
Fort St. George, Chennai-600 009.
- 2.The Secretary,
Department of Revenue,
Fort St. George, Chennai-600 009.
- 3.The District Collector,
Collectorate,
Tirunelveli District.
- 4.The Revenue Divisional Officer,
O/o.Revenue Divisional Officer,
Tenkasi, Tirunelveli District.



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5.The Tahsildar,
Veerakeralampudur,
Tirunelveli District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order in Roc.No.A1/PSR 5/2010 dated 09.12.2016 on the file of the Respondent No.3 and quash the same as illegal and consequently directing the Respondent Nos.1 to 3 to provide interest at the rate of 12% for the belated payment of all terminal benefits to the tune of Rs.19,84,586/- (Nineteen Lakhs Eighty Four Thousand Five Hundred and Eighty Six Only) to the petitioner for the period from 01.01.2013 to 29.07.2016 within the time fixed by this Court.

For Petitioner	:	Mr.P.Samuel Gunasingh
For Respondents	:	Mr.A.Baskaran Additional Advocate General assisted by Mr.P.Subbaraj Special Government Pleader



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ORDER

Heard Mr.P.Samuel Gunasingh, learned counsel for the petitioner, Mr.A.Baskaran, learned Additional Advocate General, assisted by Mr.P.Subbaraj, learned Special Government Pleader appearing for the respondents and perused the record.

2. The case of the petitioner is that he was working as Village Administrative Officer in Aanaigulam Village, Veerakeralampudur Taluk. Earlier he worked in Kulayaneri Village. On 21.03.2006, the President of Kulayaneri Village and other villagers informed him by way of written representation to the effect that one Mr.Pasanthu and Mr.Subramanian were taking their JCB vehicle through the Odai Poramboke in S.Nos.221/3 and 199/1 and destroying the water source. Then on the same day at 12 p.m., the petitioner and one Krishnan, who is the Village Assistant, went to the said poramboke and in the meanwhile, Mr.Pasanthu, Mr.Subramanian and few others had destroyed the water source of the Odai Poramboke land by using heavy equipments and they were trying to encroach the property,



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which is an Odai Poramboke belonging to the Government and to lay a road across the surplus waterway impeding the drainage of rain water. The petitioner went to protect the water channel and act in his official capacity. At that time, he was threatened by Mr.Subramanian and others with deadly weapons and was abused. Then he lodged a complaint before Surandai Police Station, which was registered as Crime No.69 of 2006 and the case is pending.

3. On 21.03.2006, the said Subramanian has preferred a complaint against the petitioner and four others in the same Surandai Police Station with false complaint and it was registered as Crime No.68 of 2006 and charge sheet was filed in C.C.No.192 of 2008. In the meanwhile, the petitioner attained superannuation on 31.12.2012 and he was allowed to retire from service and by way of a rider, permission was granted allowing him to retire without prejudice to the pending framing charges, which will follow in due course. Though the alleged incident took place in the year 2006, till date of his retirement, there was no charge memo framed. At that juncture, the petitioner filed a writ petition in W.P.(MD) No.1286 of 2013



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before this court against the order dated 31.12.2012 passed by the 5th respondent. By order dated 24.01.2013 in M.P.(MD) No.2 of 2013 in W.P.(MD) No.1286 of 2013, while issuing notice to the respondents therein, this Court passed the following order:

“In the meantime, the terminal benefits of the petitioner, to which he will be entitled, by virtue of the order, permitting him to retire, should be released. The respondents shall bear in mind the fact that if a person is permitted to retire, without prejudice, he is entitled to the terminal benefits, except to the extent of the recovery of monetary loss alone.”

4. But, the said order was not complied by the respondents. Therefore, the petitioner has filed a contempt case in Contempt Petition (MD) No.467 of 2013 before this Court. The said contempt case was closed by order dated 01.10.2013, recording the submission made by the learned Government Advocate appeared for the respondents therein that the order dated 24.01.2013 in M.P.(MD) No.2 of 2013 in W.P.(MD) No.1286 of 2013 has already been complied with by the Tahsildar, Veerakeralampudur,



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Tirunelveli District by his proceedings in Roc.A3/11695/2012 dated 19.03.2013. Though the Respondents No.4 and 5 herein informed to this Court in the contempt proceedings that proceedings are issued to comply the order of this Court on 19.03.2013, but the Respondent No.5 issued “No Objection Certificate” to issue terminal benefits to the petitioner only on 07.04.2016 after a lapse of three years from the order of the Court. As such, it is the contention of the petitioner that the Respondents No.4 and 5 have furnished false information before the Court, as if the order of the Court dated 24.01.2013 in M.P.(MD) No.2 of 2013 in W.P.(MD) No.1286 of 2013 has already been complied with.

5. The petitioner has submitted a detailed representation to the Respondents No.1 to 3 on 29.08.2016 to take necessary action against the officers, who have furnished false information before the Court and to provide interest at the rate of 12% for the belated payment of all terminal benefits, i.e., Gratuity, Provident Fund, Leave Salary, SPF, Earned Leave Salary, Family Benefit Fund and Surrender of Leave to the tune of Rs.19,84,586/- to the petitioner for the period from 01.01.2013 to



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29.07.2016. But the respondents did not consider his representation. At that stage, the petitioner filed W.P.(MD) No.19319 of 2016 seeking a direction against the respondents therein to provide interest at the rate of 12% for the belated payment of all terminal benefits for the period from 01.01.2013 to 29.07.2016 by considering his representation dated 29.08.2016.

6. This Court by order dated 06.10.2016, directed the respondents to consider the representation of the petitioner dated 29.08.2016 and pay interest for the belated payment of retirement benefits as provided under Rule 45(A) of the Tamil Nadu Pension Rules, 1978 within a period of four weeks from the date of receipt of a copy of the order. The petitioner sent a representation for compliance of the order dated 06.10.2016 of this Court. Subsequently, the 3rd respondent has passed the impugned proceedings in Roc.No.A1/PSR 5/2010, dated 09.12.2016 informing the petitioner that as per Rule 45(A) of the Tamil Nadu Pension Rules, 1978, there is no provision for sanction of interest for the belated payment of benefit of pension. Regarding interest on delayed payment of DCRG, the same will be



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paid after getting approval on the proposal sent to the Government.

Aggrieved by the said proceedings dated 09.12.2016, the petitioner filed the present writ petition.

7. Learned counsel for the petitioner submits that the order impugned in this writ petition is against to the judgment of the Hon'ble Apex Court in ***S.K.Dua v. State of Haryana*** reported in ***(2008) 3 SCC 44***. As such, it is liable to be set aside.

8. On behalf of the respondents, a counter affidavit has been filed.

9. It is averred in the counter affidavit that a criminal case is registered against the petitioner under Sections 147, 341, 294(h), 506(ii) and 149 of Indian Penal Code for the occurrence held on 21.03.2006 at Kulayaneri Village, Veerakeralampudur Taluk in Crime No.69 of 2006 while he was working as Village Administrative Officer. While the proceedings are pending, the petitioner was permitted to retire from service on the afternoon of 31.12.2012 without prejudice to the pending framing of



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charges which will follow in due course and court trial. The petitioner was acquitted from the criminal charges *vide* judgment dated 16.07.2013 in C.C.No.192 of 2008 on the file of the Judicial Magistrate, Shengottai. In pursuance of the said judgment, all terminal benefits have been disbursed to the petitioner.

10. It is also averred that Contempt Petition (MD) No.467 of 2013 was closed for having been complied with the order in M.P.(MD) No.2 of 2013 in W.P.(MD) No.1286 of 2013 by the Tahsildar, Veerakeralampudur. In compliance of the order dated 06.10.2016 in W.P.(MD) No.19319 of 2016, the representation of the petitioner was considered and proceedings dated 09.12.2016 was issued by the 3rd respondent informing the petitioner that there is no provision in the Tamil Nadu Pension Rules, 1978 for sanction of interest for the belated payment of pension benefits except DCRG. The interest on the delayed payment of DCRG will be paid to the petitioner after getting approval from the Government.



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11. Learned Additional Advocate General appearing for the respondents submits that the order impugned in this writ petition is passed strictly in accordance with the provisions of the Rules in force and there is no violation of principles of natural justice and as such, sought to dismiss the writ petition.

12. On behalf of the petitioner, a rejoinder affidavit has been filed, wherein the averments in the original affidavit of the petitioner are reiterated.

13. Learned counsel for the petitioner has placed reliance of the order dated 19.04.2022 of this Court in W.P.No.17097 of 2019.

14. Having heard the submissions of the respective counsels and upon careful examination of the material available on record, this Court finds that the facts emerge for filing of this writ petition are not in dispute.



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15. The only issue to be considered in this writ petition is whether the petitioner is entitled for interest for the belated payment of his retirement benefits from 01.01.2013 to 29.07.2016 or not?

16. Admittedly, the petitioner was permitted to retire from service on attaining superannuation with effect from 31.12.2012 without prejudice to the pending framing charges, which will follow in due course *vide* proceedings of the 4th respondent dated 31.12.2012. When the said proceedings dated 31.12.2012 are under challenge before this Court in W.P. (MD) No.1286 of 2013, by order dated 24.01.2013, in M.P.(MD) No.2 of 2013, this Court directed the release of terminal benefits of the petitioner for which he is entitled except to the extent of the recovery of any monetary loss alone. Complaining non-compliance of the said order, the petitioner filed a contempt case in Contempt Petition (MD) No.467 of 2013 and the same was closed on 01.10.2013 placing the statement of the learned Government Advocate on record, wherein he submitted that the Tahsildar, Veerakeralampudur, Tirunelveli *vide* his proceedings dated 19.03.2013 has



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complied the order of the Court dated 24.01.2013 in M.P.(MD) No.2 of 2013 in W.P.(MD) No.1286 of 2013.

17. It is an admitted fact that though it is submitted to this Court in the contempt proceedings that by proceedings dated 19.03.2013 of the 5th respondent, the order of the Court has been complied with, but “No Objection Certificate” was issued by the 5th respondent to release terminal benefits only on 07.04.2016, after a lapse of three years from the date of order of this Court.

18. On careful perusal of these facts, it appears that though the respondents submitted before the Court that the order of this Court dated 24.01.2013 in M.P.(MD) No.2 of 2013 in W.P.(MD) No.1286 of 2013 has been complied with and the terminal benefits are paid to the petitioner by proceedings dated 19.03.2013, but, even after a lapse of three years, the terminal benefits are not released. It appears only to escape from the contempt proceedings, the 5th respondent issued proceedings dated 19.03.2013, but it was not given effect thereafter to settle the terminal



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benefits of the petitioner. Similarly, when this Court in W.P.(MD) No.19319 of 2016, directed the respondents therein to consider the representation of the petitioner dated 29.08.2016 to provide interest for the belated payment of terminal benefits, the respondents issued the impugned order stating that under Rule 45(A) of the Tamil Nadu Pension Rules, 1978, there is no provision for sanction of interest for the belated payment of terminal benefits. With regard to the payment of interest on delayed payment of DCRG also, it is stated by the respondents in the impugned order that it will be paid after getting approval from the Government.

19. It is true that Rule 45(A) of the Tamil Nadu Pension Rules, 1978 provides for payment of interest on delayed payment of DCRG. In the considered opinion of this Court, though there is no provision in the Tamil Nadu Pension Rules, 1978 to sanction interest for the belated payment of terminal benefits, on consideration of the facts and circumstances of the case and as and when there is unreasonable delay made by the respondents to settle the monetary benefits to a retired employee and inspite of specific direction from this Court to settle the terminal benefits of the petitioner for



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which he is legally entitled, keeping it pending for several years by the respondents, without settling the same is illegal, arbitrary, unjust and violative of Article 21 of the Constitution of India and against to the principles of natural justice, as retirement benefits are the property of the petitioner.

20. The view of this Court is fortified by several judgments of the Hon'ble Apex Court and this Court. While dealing with the identical issue in W.P.No.17097 of 2019, this Court has considered several judgments of the Hon'ble Apex Court and passed order granting 9% interest for the delayed payment of the terminal benefits.

21. The relevant paragraphs of the said order are extracted hereinunder:

*“4. It must be recapitulated here that the Hon'ble Supreme Court of India in **State of Jharkhand -vs- Jitendra Kumar Srivastava** [(2013) 12 SCC 210] has highlighted that the terminal benefits which have been conferred in favour of the*



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employees by statute partake the character of emoluments protected as a right to property of the concerned employee under Article 300-A of the Constitution, which cannot be arbitrarily taken away without any authority of law. Since the withholding of such terminal benefits would amount to depriving the employee of his legitimate right to make use of his property at the time when he ought to have been paid the same on attaining the age of superannuation, he would have to be compensated for such delay by awarding interest.

*5. 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,*



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*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. The Hon'ble Supreme Court of India in **Dr. Uma Agrawal -vs- State of Uttar Pradesh** [(1999) 3 SCC 438] after referring to the relevant provisions of the Fundamental Rules applicable to the employees in the State of Uttar Pradesh prescribing time schedule for various steps to be taken in regard to the payment of pension and other retiral benefits, has held that the governmental departments are required to take cognizance of the same atleast two years in advance of the date of retirement of an employee, and had awarded interest in that case on account of the delay in settling the terminal benefits of the employee concerned. In this context, it must be recapitulated that corresponding provisions exist in Rules 53 to 66 of the Tamil Nadu Pension Rules, 1978, including sanction and disbursement of provisional pension till the disciplinary proceedings are concluded. This would obviously mean that any delay on the part of*



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the concerned employee in submitting the pension proposal before or after attaining the age of superannuation is inconsequential insofar as it relates to the question as to his entitlement to receive interest for the delayed payment of the terminal benefits due to him from the respective dates on which it falls due. The question that remains for consideration pertains to the rate of interest for terminal benefits other than death cum retirement gratuity which is covered by Rule 45-A of the Tamil Nadu Pension Rules, 1978. Having regard to the current rate of interest on fixed deposit offered by Nationalized Banks during the relevant time, it would be appropriate to award interest at the rate of 9% per annum from the date of his retirement till the respective dates on which the terminal benefits had been paid to him. The Respondent shall make payment of the said amount to the Petitioner along with a working-sheet showing calculation in that regard under written acknowledgement and file report of compliance by 30.09.2022 in that regard before the Registrar (Judicial) of this Court.”



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22. For the aforesaid reasons and the in the light of the judgments of various Courts, in the considered opinion of this Court, the order impugned in this writ petition is liable to be set aside and the petitioner is entitled for the relief sought in this writ petition.

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

- i. The proceedings in Roc.No.A1/PSR 5/2010 dated 09.12.2016 issued by the Respondent No.3 is hereby set aside;
- ii. The Respondents No.1 to 3 are directed to pay interest at the rate of 9% per annum from 01.01.2013 to 29.07.2016 for the belated payment of all terminal benefits within a period of six weeks from today.

23. There shall be no order as to costs.



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24. Consequently, connected miscellaneous petition is closed.

06.10.2023

Note: Issue order copy by 10.10.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

- 1.The Principal Secretary to Government,
The State of Tamil Nadu,
Fort St. George, Chennai-600 009.
- 2.The Secretary,
Department of Revenue,
Fort St. George, Chennai-600 009.
- 3.The District Collector,
Collectorate, Tirunelveli District.
- 4.The Revenue Divisional Officer,
O/o.Revenue Divisional Officer,
Tenkasi, Tirunelveli District.
- 5.The Tahsildar,
Veerakeralampudur,
Tirunelveli District.



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BATTU DEVANAND, J.

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Pre-delivery Order made in
W.P.(MD) No.1 of 2017

06.10.2023