IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.19996 of 2021
and
W.M.P.Nos.21254 & 21255 of 2021

K.Subbiah ... Petitioner

Vs.

1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai – 600 003.

2.The Additional Chief Secretary
to Government, Municipal Administration
& Water Supply Secretariat,
Chennai – 600 009.

3.The Regional Deputy Commissioner (North),
Regional Office (North),
Greater Corporation of Chennai,
61, Basin Bridge Road,
Chennai – 600 021.

4.The Assistant Commissioner,
General Administration,
Amma Maligai, Ripon Building,
Chennai 600 003. …Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling or the records in Po. Thu. Na. Ka. Nu. B12/21539/2019 dated 16.06.2020 on the file of the 3rd respondent and quash the same as being arbitrary, illegal and violative of principles of natural justice, and consequently, direct the respondents to release the DCRG amount of Rs.10,000/- and pension benefits along with the applicable interest as per the TN Pension Rules, 1978 and the prevailing G.O.s.

For Petitioner	:	Mr.R.Pravesh for Mr.P.B.Ramanujam
For R1, R3 & R4	:	Mr.G.T.Subramanian for Corporation of ChennaI
For R2	:	Ms.E.Ranganayaki Additional Government Pleader

ORDER

The petitioner herein who served as Executive Engineer in the respondent Corporation retired from service on 31.05.2014 on attaining the age of superannuation. Consequently, all his terminal benefits were settled and paid except Death-cum-Retirement Gratuity (in short "DCRG") amount of Rs.10,00,000/- purportedly on the ground that there are certain 'audit paras/audit objections' are pending against the petitioner. However, the said amount of Rs.10,00,000/- towards the DCRG was sought to be released in favour of the petitioner through proceedings Po. Thu. Na. Ka. Nu. B12/21539/2019 dated 16.06.2020. As the DCRG amount which was due in the year 2014 was sought to be paid in the year 2020 without interest, the petitioner approached this Court by filing the present writ petition claiming of the said amount of Rs.10,00,000/- with interest.

2. It is necessary to notice that inspite of offering the said amount of Rs.10,00,000/-, the petitioner, instead of receiving the said amount, approached this Court claiming interest while refusing to receive the said amount which was sanctioned and sought to be released in favour of the petitioner on 16.06.2020. According to the petitioner, there are no audit objections that were pending against the petitioner.

3. On the other hand, it is the specific contention of the petitioner that the concerned department had already issued a “No Audit claim & No Due” certificate prior to his retirement itself. As against the specific contention raised by the petitioner, though the respondents filed counter affidavit contending that the 'audit paras' are pending against the petitioner

and written request was given for audit clearance for releasing the DCRG amount and based on the consent letter given by the petitioner the rest of the pensionary benefits were released in favour of the petitioner on 31.10.2014 itself. Though it is contended in the counter that the petitioner was requested to clear an 'audit paras', there is no such material that is placed before this Court in support of such contention or to contradict to the contention of the petitioner that there are no 'audit paras' that were pending against the petitioner.

4. The learned counsel appearing for the respondent, though having entire record relating to the case on hand, is not able to show any such request made to the petitioner to clear the 'audit paras/audit objections' at any point of time. Be that as it may, without the petitioner taking any steps for clearing any such 'audit paras', it is the respondent Corporation who released the DCRG amount through proceedings dated 16.06.2020 i.e., almost after a period of 6 years since the date of superannuation of the petitioner. That itself shows that there is nothing pending from the side of the petitioner to clear either 'audit objections/audit paras' or any other aspect. If that be the case, there is no justifiable reasons for the respondent Corporation to

withhold an amount of Rs.10,00,000/- for a period of about six years without releasing the same to the petitioner.

5. Even assuming that there are any 'audit objections' against the petitioner, it is for the employer to enquire into such objections and take appropriate action against the petitioner. Once the petitioner retired from service he has nothing to do with 'audit objections' of whatsoever. The respondent Corporation, instead of enquiring into such 'audit objection' said to have been pending against the petitioner, have carelessly and negligently delayed the payment of DCRG amount which are due and payable to the petitioner on the date of superannuation. The petitioner cannot be found fault with for any delay in settlement of such audit objections. Furthermore, ultimately it is the respondent Corporation which has come to the conclusion that there are no sustainable objection against the petitioner and released the entire DCRG amount in favour of the petitioner in the year 2020. Therefore, the petitioner cannot be found fault with for the delay in release of DCRG amount and it is only the respondent Corporation or its officers who can be held liable for such delay.

6. In terms of Rule 45 A of the Tamil Nadu Pension Rules, interest on delayed payment of gratuity is liable to be paid in case the delay occurred is on the part of the employer. In the instant case, as already noted above, there is no delay on the part of the petitioner and the entire delay is on the part of the respondent Corporation or its officers in releasing the DCRG amount in favour of the petitioner. The proviso of Sub Rule 1 of Rule 45-A of Tamil Nadu Pension Rules which deals with delayed payment of gratuity amount, reads as follows:

> *"Provided also that on and from 1st April 2004, the rate of such interest shall be at the rate of interest payable, on General Provident Fund during the year of retirement of the Government servant (Compounded annually)"*

The above said proviso applies to the case on hand and the respondent Corporation is liable to pay interest on the delayed payment of DCRG amount at the rate of interest payable on General Provident Fund during the year 2014.

7. As already observed, there is no justifiable reasons put forth by the respondent Corporation for the abnormal delay in release of DCRG

amount in favour of the petitioner. The said amount of Rs.10,00,000/- is sought to be paid after deducting the amount of Rs.25,200/- towards the amount recoverable in respect of punishment of stoppage of one increment imposed on the petitioner. It is contended that the appeal is pending against the said punishment of stoppage of one increment as on date. Therefore, the petitioner cannot have an objection for recovery of said amount of Rs.25,200/- from the said DCRG amount. Accordingly, the petitioner is entitled for payment of the balance amount after deducting the amount of Rs.25,200/- from Rs.10,00,000/- with interest at the rate of 8.70% compounded annually till 16.06.2020, which is the rate of interest payable on the General Provident Fund amount during the year 2014.

8. Accordingly, this writ petition is allowed directing the respondents to pay the DCRG amount of Rs.10,00,000/- after deducting the amount of Rs.25,200/- with interest at the rate of 8.70% compounded annually till 16.06.2020 within a period of eight (8) weeks from the date of receipt of a copy of this order.

9. As there is no justifiable reasons for the delay in payment of the

DCRG amount in favour of the petitioner and the same is now directed to be paid with interest, the said interest amount being paid is only because of the negligence and dereliction of the duty of the officers concerned. Therefore, it is left open to the respondent Corporation to recover such interest amount from the officers who are responsible for such abnormal delay in release of DCRG amount in favour of the petitioner.

10. Consequently, the connected miscellaneous petitions, if any, shall stand closed. No costs.

04.06.2024

Index : Yes/No
Speaking Order : Yes/No
dpa

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