



WEB COPY

W.P. No.11442 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.02.2025

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P. No.11442 of 2022

S. Ganesan

...Petitioner

Vs.

1. The State of Tamil Nadu rep. by its
Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai 9

2. The Director of Drugs Control,
Directorate of Drugs Control,
No.359, Anna Salai, Chennai 600 006

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to consider the claims of the petitioner and pay interest for the belated payment of the petitioner's terminal benefits.

For Petitioner : Mr. K. Arumugam

For Respondents : Mr.E. Sundaram, Government Advocate.

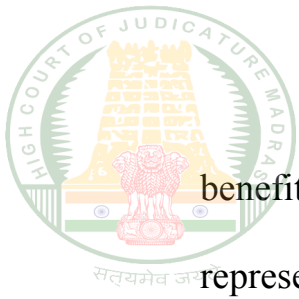


ORDER

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This Writ Petition has been filed for issuance of Mandamus directing the respondents to consider the claim of the petitioner and pay interest for the belated settlement of his terminal benefits.

2. The petitioner was appointed as a driver in the office of the State Drugs Controller, Madras-6, on 19.11.1986, he joined the office on 24.11.1986 and continued his service till the date of his superannuation, on 30.09.2017. The petitioner was suspended from service on 28.09.2017, vide proceedings in Proc.RC.No.6538/E3/2017, and was not allowed to retire from service on the ground that a criminal case was pending against him. The petitioner was acquitted from the said criminal case vide orders dated 28.03.2019, of the learned Judicial Magistrate No.1, Thiruvannamalai, in C.C. No.222 of 2013. Thereafter, vide proceedings in Proc. RC.No.1924/E3/2020, of the second respondent dated 11.02.2020, the petitioner was permitted to retire from service with effect from 30.09.2017, and was granted retirement benefits on 18.06.2020, without any interest for the belated payment of the retirement benefits. On 12.05.2021, the petitioner sent a representation to the respondents requesting them to pay interest for the delay in the payment of his terminal



benefits. As there was no response from the respondents for the said representation, the petitioner filed the present writ petition.

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3. The respondents filed a counter stating *inter alia* that, after the acquittal of the petitioner from the criminal case in C.C. No.222 of 2013 dated 28.03.2019, the respondents addressed a letter to the Thiruvannamalai City Police Station and the Superintendent of Police, Thiruvannamalai District, to clarify whether any appeal had been filed against the acquittal of the petitioner from the criminal case. It was only on 15.10.2019, the Superintendent of Police, Thiruvannamalai District, replied that no appeal was preferred against the acquittal order. The respondents, thereafter, revoked the suspension of the petitioner vide proceedings in Ref No.192/E3/2020 dated 11.02.2020, and permitted the petitioner to retire from service. Thereafter, on 06.03.2020, the respondents sent a proposal to the Accountant General for disbursing the pensionary benefits of the petitioner and an authorization of the Accountant General in this regard was received on 13.05.2020 and 19.05.2020. According to the respondents, there was absolutely no delay on their part and the petitioner was not entitled to any interest and therefore, the present writ petition deserved to be dismissed.



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4. Mr. K. Arumugam, learned counsel appearing for the petitioner submitted that even though the Superintendent of Police, Thiruvannamalai District, sent a reply dated 15.10.2019, stating that no appeal was preferred against the order of acquittal of the petitioner from the criminal case, the respondents proceeded lethargically and revoked the suspension order of the petitioner only on 11.02.2020. Even the proposals for DCRG were sent to the Accountant General only on 06.03.2020. The learned counsel for the petitioner, therefore, submitted that the delay in the payment of terminal benefits was solely attributable to the respondents and therefore, they should be directed to pay interest for the delayed payment.

5. *Per Contra*, Mr.E.Sundaram, learned Government Advocate appearing for the respondents, contended that after the communication from the Superintendent of Police, Thiruvannamalai District, the suspension order of the petitioner was revoked on 11.02.2020, and the petitioner was allowed to retire from service from 30.09.2017. Thereafter, within a month, pension proposal was sent to the Accountant General office and an authorisation was also received on 13.05.2020 and 19.05.2020 from the said office. Thereafter, on 18.06.2020, the petitioner was paid pension and the other terminal benefits. The counsel, therefore,



contended that there was no delay on the part of the respondents and that the writ petition lacked merits.

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6. Heard Mr. K. Arumugam, learned counsel appearing for the petitioner, Mr.E.Sundaram, learned Government Advocate appearing for the respondents and perused the material placed on record.

7. The facts are not disputed. The only issue is whether the petitioner is entitled to interest for the delayed payment of terminal benefits. Admittedly, the petitioner was acquitted by the Judicial Magistrate, Thiruvannamalai District, on 28.03.2019 in C.C. No.222 of 2013. Thereafter, the respondents communicated to the Thiruvannamalai City Police Station and the Superintendent of Police, Thiruvannamalai District, to clarify whether any appeal was preferred as against the order of acquittal. The respondents received a letter from the Superintendent of Police, Thiruvannamalai District, dated 15.10.2019, stating that no appeal was preferred. Only on 11.02.2020, i.e. after a lapse of almost four months, the respondents revoked the suspension order and allowed the petitioner to retire from service. One month thereafter, the respondents sent pension proposals to the Accountant General office. Therefore, at least from 15.10.2019 to 06.03.2020, the delay is solely attributable to



the respondents. Thereafter, the terminal benefits were settled to the petitioner on 18.06.2020.

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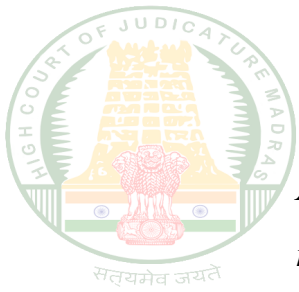
8. The Hon'ble Supreme Court of India in ***State of Jharkhand -vs- Jitendra Kumar Srivastava*** [(2013) 12 SCC 210] held as follows:

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31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in K.R. Erry v. State of Punjab [AIR 1967 Punj 279 : ILR (1967) 1 Punj 278] . The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant.

The Court in paras 15 and 16 went on to hold that the right to receive pension was a right to property under Article 300-A of the Constitution of India. The said paras read as follows:

"15. In State of W.B. v. Haresh C. Banerjee [(2006) 7 SCC 651 : 2006 SCC (L&S) 1719] this Court recognised that even when, after the repeal of Article 19(1)(f) and Article 31(1) of the Constitution vide Constitution (Forty-fourth Amendment)



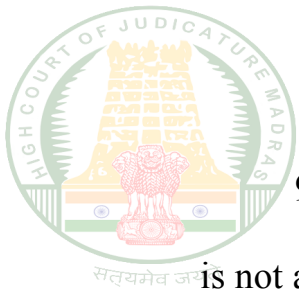
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Act, 1978 w.e.f. 20-6-1979, the right to property no longer remained a fundamental right, it was still a constitutional right, as provided in Article 300-A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 which conferred the right upon the Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court.

16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in “property”. Article 300-A of the Constitution of India reads as under:

“300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law.”

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.”



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9. It is therefore clear from the above pronouncements that pension is not a bounty, but property. It is also trite that there can be no deprivation of property except by authority of law. I have already found that there is a delay of atleast four months, if not more, solely attributable to the respondents. The lethargy on the part of the respondents, should not result in loss to the petitioner. Useful reference can be made to the judgment of the Hon'ble Supreme Court in the case of *Dr.Uma Agarwal vs. State of Uttar Pradesh* reported in *1999(3) SCC 438* with regard to payment of interest. In view of the fact that the petitioner was made to suffer for four months due to nonchalant attitude of the respondents, the respondents are bound to pay the interest for the belated payment of terminal benefits from 15.10.2019 to 18.06.2020 to the petitioner. The respondents shall pay interest at the rate of 12% per annum for the period from 15.10.2019 to 18.06.2020. The interest amount shall be disbursed to the petitioner within period of eight (8) weeks from the date of receipt of a copy of this order. The Writ Petition is accordingly allowed. No costs.

04.02.2025

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Speaking Order: Yes/No

Index: Yes/No

NCC:Yes/No

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N.MALA, J

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