**(2012) 03 MAD CK 0182**

**In the Madras High Court**

**Case No :** Writ Petition No. 10582 of 2009

L. Gopalan APPELLANT

Vs

Commissioner of Agriculture and Others RESPONDENT

**Date of Decision :** 29-03-2012

**Acts Referred:**
Payment of Gratuity Act, 1972 — Section 7(3), 7(3A)

**Citation :** (2013) 2 SCT 429

**Hon'ble Judges :** K.N. Basha, J

**Bench :** Single Bench

**Advocate :** T.V. Krishnamachari, for the Appellant; V.M. Velumani, Spl. GP., for the Respondent

**Final Decision :** Allowed

# Judgement

K.N. Basha, J.—The petitioner has come forward with this petition seeking for the relief of directing the respondents 1 to 3 to disburse forthwith interest amount to the rate of 12% per annum from 31.10.2000 till 30.11.2008 for the DCRG amount of Rs. 2,24,516. The case of the petitioner is that the petitioner retired as Administrative Officer on 31.10.2000 from the office of the Director of Agriculture, Chennai on attaining the age of superannuation as per the orders dated 30.10.2000. He is having unblemished record of service of more than 38 years. A No-Charge Certificate dated 27.12.2000 addressed to the Pension Payment Officer, Chennai, was also issued in favour of the petitioner.

1.1. Though the petitioner was permitted to retire on 31.10.2000 and in spite of the clear and categorical instructions, the gratuity amount due to the petitioner was not disbursed till 30.11.2008. To the shock and surprise, the petitioner was informed by the Commissioner of Agriculture, Chennai, the 1st respondent herein, through his letter dated 06.05.2004 that the DCRG amount has been with held for the following reasons, viz.,

[1] Proposal of the Director of Agriculture sent to Government for ratification for

the purchase of the furniture and other items is pending with the Government.

[2] Pay fixation for Selection Grade/Special Grade Superintendent is under consideration of Government.

Both the above reasons are not valid reasons for withholding the DCRG amount of the petitioner. He was the cashier in the office of the Superintendent and thereafter, he was promoted as Administrative Officer-IV, incharge of bills and cash of the office. The petitioner, during his tenure as Cash Superintendent/ Administrative Officer, received an amount of Rs. 96 lakhs by way of 2 cheques from the Government of India as per the cheque dated 21.12.1993 being the 50% of the subsidy towards implementation of the special component plan, Central Assistance Scheme for the benefit of the Adi-Dravidar farmers during February 1994. The said amount was deposited in the Nationalised Bank with short term deposits. The interest amount from the said deposits was utilised for the purchase of furniture and Air-Conditioners for the Department use from the Government approved TANSI and other Agencies. The said amount of Rs. 96 lakhs along with the accrued interest have been properly remitted for the purpose for which it was allotted and received in the Agriculture Department. The Government also ratified the said actions as per G.O. [2D] No. 162 Agriculture [AP2] Department dated 03.08.2007. The delay in issuing the ratification order is due to the wrong information furnished by the Director of Agriculture to the Government.

1.2. The pay fixation recovery ordered to be recovered is not at all correct and this was also misunderstood and misinterpreted ignoring G.O.Ms. No. 538 Finance [CMPC] dated 27.11.2000. The petitioner''s pay was fixed on par with his junior as per the order of the Director of Agriculture dated 24.09.1993. Subsequently, the said order was cancelled by the order dated 17.07.1995. The excess pay and allowances drawn and disbursed to the petitioner due to the above wrong fixation of pay was arrived at Rs. 34,394/- and this amount was ordered to be recovered from the DCRG amount of the petitioner in one lumpsum. This has been mentioned in the retirement order dated 30.10.2000. The 3rd respondent in his subsequent proceedings dated 19.01.2001, on the basis of the clarification obtained from the Government, has refixed the same pay at various stages from 01.10.1984 to 01.10.1989 and it was categorically ordered that no recovery shall be made from the petitioner. The petitioner was given notional stagnation increment with effect from 01.10.1988 as he had completed 20 years of service as per G.O.Ms. No. 666, Finance [Pay Commission] dated 27.06.1989. Special grades were given effect from 27.06.1989 only as per G.O.Ms. No. 304, Finance [PC] dated 28.03.1990. The correct pay fixation order dated 19.01.2001 was suppressed by the Directorate for six years and necessary entries to this effect was made in the Service Register of the petitioner only during April 2007.

1.3. In the meantime, as per the verdict of the Hon''ble Apex Court, the Government revised the scale of pay of the Superintendent from Rs. 1600-2660 to Rs. 1700-3005 with effect from 01.06.1988 as per G.O.Ms. No. 538 dated 27.11.2000 and as per the Government letter dated 12.01.2001. The 1st respondent without verifying the various aspects, viz., the Government orders and Government letters, has sent a proposal to the Accountant General, Chennai, reducing the pension of the petitioner and other pensionary benefits as per the proceedings dated 18.08.2008. However, the Accountant General, Chennai, has carefully perused all the facts suppressed by the 3rd respondent and returned the revised pension proposal of the 3rd respondent without revising the pension and other pensionary benefits. The Accountant General also authorised the 3rd respondent to draw and disburse the DCRG amount of Rs. 2,24,516/- as per the cheque dated 01.12.2008 drawn at State Bank of India, Thousand Lights Branch, Chennai, to the petitioner without prejudice for claiming the interest for the delayed payment of the DCRG. The delay in disbursement of the DCRG amount is not due to the fault of the petitioner but only due to the above said circumstances as the fault is on the side of the respondents.

1.4. The petitioner was fighting for the receipt of the DCRG amount from 31.10.2000 to 30.11.2008 and in view of the delay, the petitioner is entitled to claim an interest @ 12% per annum as per the Government rules from the date of retirement, i.e., from 31.10.2000 till the date of disbursement, i.e., upto 30.11.2008. Under the above said circumstances, particularly, in view of the inordinate delay of nearly about 8 years in disbursing the DCRG amount, the petitioner has been constrained to approach this court by filing the above said writ petition with the above said prayer.

2. Mr. T.V. Krishnamachari, learned counsel appearing for the petitioner would contend that only after the continuous struggle and representations and by issuing lawyer''s notice, the petitioner has been disbursed with the DCRG amount of Rs. 2,24,516/- on 01.12.2008 by way of cheque dated 01.12.2008. It is contended that in view such belated payment of the DCRG, the petitioner is entitled to claim the interest for the belated payment. Learned counsel would contend that an employer shall arrange to pay the gratuity within a period of 30 days and if there is any delay, they are liable to pay interest as per the provision u/s. 7[3] and 7[3-A] of the Payment of Gratuity Act, 1972. It is contended that the said provisions are mandatory. It is further contended that the contention of the respondents to the effect that the amount of Rs. 34394/- has been paid in excess to the petitioner by way of wrong pay fixation is unacceptable. It is pointed out that the respondents have overlooked the orders passed by the 3rd respondent dated 19.01.2001 to the effect of fixation of pay scale as well as to the effect of directing the authorities not to withhold or recover any amount from the petitioner. Therefore, it is submitted that the statement made in the counter is not correct as the petitioner has not received any excess amount. Learned counsel would further contend that there is absolutely no fault on the side of the petitioner for such an inordinate delay of 8 years for disbursing the DCRG amount and the respondents have not given any explanation for such delay in the counter filed before this court. Therefore, it is contended that the petitioner

 

is entitled to claim interest @ 12% per annum for the period from 31.10.2000 to 30.11.2008.

2.1. In support of his contentions learned counsel appearing for the petitioner would rely upon the following judgments of the Hon''ble Apex Court:-

[a] State of Kerala and Others Vs. M. Padmanabhan Nair, and

[b] H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd.,

3. Per contra, Ms. V.M. Velumani, learned Special Government Pleader would contend that there is no delay on the part of the respondents in disbursing the DCRG amount. It is submitted that a detailed counter has been filed by the 2nd respondent herein explaining the reasons for delay in disbursing the DCRG amount. She would further contend that due to the wrong fixation of the pay made to the petitioner on par with his junior, an amount of Rs. 34,394/- was paid in excess to the petitioner and the said amount is due from him to the Government from 1995. Therefore, the question of sanctioning interest for the belated payment of the DCRG amount does not arise.

4. This court carefully considered the rival contentions put forward by either side and perused the entire materials available on record including the affidavit filed by the petitioner and the counter filed by the 2nd respondent.

5. The undisputed fact remains that the petitioner has been allowed to retire as early as on 31.10.2000 and a No Charge Certificate was also issued in his favour on 27.12.2000 which was addressed to the Pension Payment Officer, Chennai. It is pertinent to note that the respondents disbursed the DCRG amount only on 01.12.2008 after an inordinate delay of eight years by paying an amount of Rs. 2,24,516/- by way of cheque bearing No. 006330 dated 01.12.2008 drawn at State Bank of India, Thousand Lights Branch, Chennai. This court cannot overlook the sequence of events and the struggle made by the petitioner for getting the said DCRG amount and that too, after sending several written communications and lawyer notice. A perusal of the counter filed by the 2nd respondent also does not disclose any valid reason for such an inordinate delay in disbursement of DCRG amount and the same also does not disclose that there is any fault on the side of the petitioner for such delay.

6. At this juncture, it is relevant to refer the provision u/s. 7[3] and 7[3-A] of the Payment of Gratuity Acts 1972 which reads as here under:-

7[3]:- The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

7[3-A]:- If the amount of gratuity payable under sub-section [3] is not paid by the employer within the period specified in sub-section [3], the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the

 

Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify.

7. A bare reading of the above said provision makes it abundantly clear that the said provision is a mandatory one. Therefore, the respondents are liable to disburse the DCRG amount within the prescribed or stipulated period as per the provision u/s. 7[3] and in the event of not paying the same within a period of 30 days from the date it becomes payable, then the petitioner is entitled to claim interest as per the provision u/s. 7[3-A] of the Act.

8. The respondents have also made a feeble attempt to deny the interest amount by stating in the counter to the effect that due to a wrong fixation of pay made to the petitioner, an excess amount of Rs. 34,394/- was paid to him and as such, there is no question of paying any interest for the delayed payment. I am unable to countenance such contention of the respondents for the simple reason that the order dated 19.01.2001 passed by the 3rd respondent makes it crystal clear that as per the said order, not only the pay fixation was made in respect of the petitioner but also it was made clear that the respondents cannot withhold or recover any payment pursuant to the earlier order passed on 24.09.1993 as the said order was already cancelled by the order dated 17.07.1995. Therefore, there is absolutely no legal impediment for the respondents in disbursing the DCRG amount. It is also relevant to note that the petitioner is not at all responsible for such inordinate delay of 8 years in disbursing the DCRG amount. Even in the counter, the respondents have not blamed the petitioner for such delay. On the other hand, they have stated other reasons which arc unacceptable and not borne out by any record. Learned counsel for the petitioner has also rightly placed reliance on the decision of the Hon''ble Apex Court in State of Kerala and Others Vs. M. Padmanabhan Nair, wherein the Hon''ble Apex Court has held as hereunder:-

Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are 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. The liability to pay penal interest on these dues at the current market rate commences at the expiry of two months from the date of retirement.

9. In yet another decision in H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd., the Hon''ble Apex court has held as here under:-

Payment of gratuity with or without interest as the case may be does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest.

 

Where interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the employee was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the Courts during the pendency of enquiry by Single Judge of High Court after having held that the employee was entitled for payment of gratuity, denial of the interest on the delayed payment of gratuity was not legal having due regard to S. 7[3A] of the Act, when it was not the case of the employer that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the Controlling Authority for the delayed payment on that ground as contemplated by section 7[3A]. Further, it was also held by Supreme Court that the Division Bench of the High Court, having found that the employee was entitled for interest, was not justified in declining to interfere with the order of the single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the Single Judge could not be said to be arbitrary.

The principles laid down by the Hon''ble Apex court in the decisions cited supra are squarely applicable to the facts of the instant case as in this case also, admittedly there is an inordinate delay of eight years in disbursing the DCRG amount to the petitioner as the said amount was paid only on 01.12.2008 in spite of the retirement of the petitioner as early as on 31.10.2000. Therefore, this court is of the considered view that the respondents are liable to pay interest.

Accordingly, the writ petition is allowed and the respondents 1 and 2 are hereby directed to pay an interest @ 12% per annum from 31.10.2000 to 30.11.2008 for the belated payment of DCRG amount of Rs. 2,24,516/- on 01.12.2008. No costs. It is made clear that the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.