

(2011) 06 MAD CK 0414

In the Madras High Court

Case No : Writ Petition No. 18273 of 2007 (T) and O.A. No. 1541 of 2004

M. Velayutham

APPELLANT

Vs

Secretary to Government, Municipal Administration and
Water Supply Department and Director of Local Fund Audit

RESPONDENT

Date of Decision : 06-06-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21
Prevention of Food Adulteration Act, 1954 — Section 10

Citation : (2011) 06 MAD CK 0414

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : Ravi Shanmugam, for Sudha Ravi Associates, for the Appellant; S.V. Durai Solai Malai, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Manikumar, J.—The Petitioner is a retired Sanitary Inspector, Chengalpet Municipality, Chengalpet. While in service, he was issued with a charge memo dated 21.07.1994 by the Commissioner, Chengalpet Municipality, for certain allegations pertaining to the year 1993. He submitted his explanation to the charges on 25.07.1994. As he was due to retire on attaining the age of superannuation on 31.07.1994, he was permitted to retire without prejudice to the disciplinary proceedings.

2. It is the further case of the Petitioner that though he submitted his explanation to the charge memo without any delay on 25.07.1994, the Government called for further explanation only on 20.11.2001, after expiry of seven years from the date of his retirement. He submitted his further explanation on 24.12.2001 and not accepting the same, charges were held as proved and a penalty of cut in pension of Rs. 100/-for one year was imposed on 20.05.2002.

3. It is the grievance of the Petitioner that though the disciplinary proceedings

were concluded in the year 2002 by imposing a punishment of cut in pension, DCRG and commutation amount of pension to the tune of Rs. 83,900/-was not disbursed till 15.03.2004 and that there was a delay of two years. According to the Petitioner, he was no way responsible for the delay in conclusion of the disciplinary proceedings and in such circumstances, he is entitled to award of interest on the belated payment of Rs. 83,900/-, being the DCRG and commutation of pension for the period from 31.07.1994 to 15.03.2004.

4. Mr. Ravi, learned Counsel for the writ Petitioner submitted that the Petitioner is entitled to interest on belated payment for the period stated supra and for the above said contentions, he relied on the decisions of the Supreme Court in R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another, and the decision of this Court in Government of Tamilnadu, rep. by the Secretary to Government, Revenue Department, Chennai and Anr. v. M. Deivasigamani reported in 2009 (3) MLJ 1.

5. Opposing the relief sought for in this writ petition and reiterating the contentions made in the counter affidavit filed by the Director, Local Fund Audit, Chennai, the 2nd Respondent herein, Mr. S.V. Durai Solai Malai, learned Additional Government Pleader submitted that disciplinary proceedings were initiated against the Petitioner on 21.07.1994 and as the Petitioner was due to retire on attaining the age of superannuation on 31.07.1994, he was permitted to retire pending disposal of the disciplinary proceedings. He was sanctioned provisional pension vide letter No. R. Dis. No. PV(6)/19392/96, dated 14.05.1996 of the Director of Local Fund Audit, Chennai. He further submitted that the Government have called for further explanation from the Petitioner, and the same was submitted on 24.12.2001. As the charges were held proved, the Government by its letter dated 08.04.2002, called for the Petitioner's further explanation against the proposed penalty of cut in pension of Rs. 100/-per month, for one year. After considering the Petitioner's explanation dated 20.04.2002, the Government imposed the punishment of cut in pension of Rs. 100/-per month, for one year vide G.O.(D) No. 182, M&WS(ME-III) Department, dated 20.05.2002. He further submitted that regular pension proposals of the Petitioner were received by the Director of Local Fund Audit, Chennai only on 01.12.2003 vide letter No. 3512/C1/2003 dated 27.11.2003 of the Commissioner, Chengalpeta Municipality and immediately on receipt of the proposals, pensionary benefits were sanctioned by the 2nd Respondent on 13.02.2004.

6. Learned Additional Government Pleader further submitted that the following amounts were sanctioned by the 2nd Respondent on 13.02.2004, as per the details.

DCRG:

Total Amount

Rs.47,438/-

Recovery

NIL

Net

Rs.47,438/-

Commutation Pension

Rs. 1,198/-

1/3rd portion of pension

Rs. 399/-

Pension after commutation

Rs. 799/-

Commutation Amount

Rs.39,118/-

DCRG

Rs.47,438/-

Commutation

Rs.39,118/-

Grand Total

Rs.86,556/-

Family Pension:

50% Enhanced Family Pension

Rs.1,198/-

30% Ordinary Family Pension

Rs. 719/-

7. According to the learned Government counsel, before settlement of the above said amount, the Petitioner was already sanctioned provisional pension of Rs. 1,198/-per month with effect from 01.08.1994 vide letter No. 19392/PV (6)/96 dated 14.05.1996 and Rs. 3,622/-with effect from 01.01.1996 onwards vide letter No. 60475/MPV2/03, dated 13.02.2004.

8. Learned Government counsel further submitted that no sooner the disciplinary proceedings were concluded and on receipt of pension proposals, from the Commissioner, Chengelpet Municipality, DCRG and commutation pension were paid without any delay and in such circumstances, the Petitioner is not entitled to

interest. For the above said reasons, he prayed for dismissal of the writ petition.

9. Heard the learned Counsel for the parties and perused the materials available on record.

10. Admittedly, disciplinary proceedings were initiated by charge memo dated 21.07.1994, by the Commissioner of Chengelpet Municipality for certain allegations pertaining to the year 2003, for which the Petitioner has submitted his explanation on 25.07.1994. Without prejudice to the disciplinary proceedings, the Petitioner has been permitted to retire from service on attaining the age of superannuation on 31.07.1994 and that the provisional pension at the rate of Rs. 1,198/-with effect from 01.08.1994, has also been sanctioned vide letter No. R. Dis. No. PV(6)/19392/96 dated 14.05.1996 by the Director of Local Fund Audit, Chennai and subsequently, Rs. 3,622/-with effect from 01.01.1996 onwards, vide letter No. 60475/MPV2/03 dated 14.03.2004.

11. Though the learned Government counsel has submitted that soon after the conclusion of the Disciplinary proceedings and on receipt of the proposals from the Commissioner, Chengelpet Municipality, pensionary benefits were sanctioned by the Director of Local Fund Audit, Chennai on 13.02.2004, there is absolutely no explanation for the inordinate delay in the conclusion of disciplinary proceedings initiated on 21.07.1994, by the Commissioner, Chengelpet Municipality for the allegations of the year 1993. The Government have taken nearly seven years to call for Petitioner's further explanation and after eight years, from the date of initiation, charges have been held proved and the Government by letter dated 08.04.2002, had called for further explanation against the proposed penalty of cut in pension of Rs. 100/-per month, for one year, for which an explanation had been submitted on 20.04.2002. The Government have imposed a punishment of cut in pension of Rs. 100/-per month, for one year, vide G.O.(D) No. 182, M&WS(MEIII) Department, dated 20.05.2002.

12. The contention that the Petitioner, was not responsible for the inordinate delay of the disposal of the disciplinary proceedings has not been specifically refuted in the counter affidavit filed by the Respondents. As per Rule 9 (1) (a) of the Tamilnadu Pension Rules, the Government reserve to themselves the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon reemployment after retirement, and such withholding or withdrawing the pension may be effected irrespective of the fact whether or not any pecuniary loss on account of such grave misconduct or negligence was caused to the Government, to any local body or to any co-operative society comprising of government servants and registered under the Tamilnadu Co-operative Societies Act, 1961.

13. Clause (b) of the above said rules states that if in case there is any pecuniary

loss caused to the Government, to any local body or to any co-operative society comprising of Government servants and registered under the Tamilnadu Co-operative Societies Act, 1961, and if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement, the government shall also have the right of ordering recovery from the pension or Death-cum-Retirement Gratuity of the whole or part of the pecuniary loss caused by such grave misconduct or negligence. In both the cases, the Tamilnadu Public Service Commission shall be consulted before passing of any final orders, if the pensioner is not agreeable for withholding or withdrawing the pension.

14. Sub Rule 2 (a) of Rule 9 of the Tamilnadu Pension Rules, 1978, further states that the departmental proceedings referred to in Sub-rule (1), if instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall after the final retirement of the Government servant be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

15. Sub rule (4) of Rule 9 of the above said rules states that in the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental proceedings are continued under Sub-rule 2, a provisional pension as provided in Rule 60 or Rule 69, as the case may be, shall be sanctioned.

16. Material on record discloses that the following charges have been levelled against the Petitioner:

Charges:

1. that he has failed to record details regarding who sold the Rose Milk on 10.06.1993, whether he was owner of the shop or salesman as required u/s 10 to 15 of P.F.A. Rules.

2. that he failed to obtain the signature of the witness in Exp.3.

3. that he failed to produce his course certificate to prove that he is competent Food Inspector to take food samples.

4. that by having committed lapses as pointed out in the judgment, he failed in discharging his statutory functions as a Food Inspector.

5. that by the acquittal of an adulterated case, he brought discredit to the administration and invited public criticism.

6. that by his carelessness right from the time of taking sample and giving deposition in C.C. No. 70/93 in the court he has derelicted his duties.

Both Rules 60 and 69 of the Pension Rules, state that only in cases where there

is pecuniary loss to the Government and when the Government servant is permitted to retire without prejudice to such departmental or judicial proceedings, withholding of gratuity is permissible. In cases where disciplinary proceedings are initiated for administrative lapses not involving pecuniary loss to the Government, no gratuity could be withheld, in respect of Government servant, permitted to retire without prejudice to the departmental or judicial proceedings.

17. Reading of charges do not reflect pecuniary loss to the Government. Therefore, this Court is of the considered view that no sooner the Petitioner was permitted to retire from service on 31.07.1994, without prejudice to the disciplinary proceedings, he ought to have been paid the DCRG amount of Rs. 47,438/-immediately. Therefore, he is entitled to payment of interest from 31.07.1994 till the date of actual payment on 15.03.2004.

18. In Government of Tamilnadu, rep. by the Secretary to Government, Revenue Department, Chennai and Another v. M. Deivasigamani, reported in 2009 (3) MLJ 1, a Division Bench of this Hon"ble Court to which this Court is a party has held as follows:

an employee is entitled to claim interest on belated payment of pension and other retiral benefits, even in the absence of statutory rules/administrative instructions or guidelines, under Part III of the Constitution of India relying on Articles 14, 19 and 21 of the Constitution of India.

It is also worthwhile to extract the decisions of the Supreme Court relied on by the Division Bench in M. Deivasigamani"s case

5. In Dr. Uma Agarwal v. State of U.P. reported in 1999 (3) MLJ 29 (SC) the Supreme Court held that at p.32 as follows:

4 ...grant of pension is not a bounty but a right of the government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case.

6. The contention of the Appellant that as per the Government norms, interest can be paid only on Death-cum-Retirement Gratuity, in case of delay and the same cannot be awarded to any other retiral benefits, is not tenable, in view of the decision of the Supreme Court in S.K. Dua Vs. State of Haryana and Another, . In the reported case, the Appellant therein was served with three charge sheets/show cause notices in June 1998, few days before his retirement. However, he retired on 30.06.1998 on reaching the age of superannuation. He

was paid provisional pension, but other retiral benefits were not given to him, which included commuted value of pension, leave encashment, gratuity, etc., They were withheld till the finalisation of disciplinary proceedings. While answering the issue as to whether the Appellant therein was entitled to interest on delayed payment of retiral benefits, in the absence of any statutory rules, administrative instructions or guidelines, the Supreme Court at Paragraph 14 of the judgment, 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 the 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 opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the Respondents.

In the above reported Division Bench judgment, this Court awarded 10% interest per annum for the belated payment of pension, commutation of pension, DCRG and other retiral benefits.

19. Rule 69 (2) of the Pension Rules states that payment of provisional pension made under Sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings, but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specific period.

20. In the case on hand, provisional pension has been sanctioned in the year 1996 at the rate of Rs. 1,198/- per month with effect from 01.08.1994 and Rs. 3,622/-per month with effect from 01.01.1996, vide orders dated 14.05.1996 and 13.02.2004, respectively by the Director of Local Fund Audit, Chennai. Disciplinary proceedings have been concluded by imposing a punishment of cut in pension of Rs. 100/-per month for one year by the Government in G.O.(D) No. 182, M&WS(ME-III) Department, dated 20.05.2002 and pensionary benefits have been sanctioned on 13.02.2004 and that disbursement has been made on 15.03.2004. The details of the commutation and family pension as per the counter affidavit are as follows:

Pension

Rs. 1,198/-

1/3rd portion of pension

Rs. 399/-

Pension after commutation

Rs. 799/-

Commutation Amount

Rs.39,118/-

DCRG

Rs.47,438/-

Commutation

Rs.39,118/-

Grand Total

Rs.86,556/-

Family Pension:

50% Enhanced Family Pension

Rs.1,198/-

30% Ordinary Family Pension

Rs. 719/-

There is a delay of two years in payment of commutation pension of Rs. 39,118/-. Though the Respondents have contended that no sooner the disciplinary proceedings were concluded on 20.05.2002 payments were made, this Court is not inclined to subscribe to the contentions, as the delay in payment of commutation of pension and the balance amount is per se apparent and the Petitioner is entitled to interest for the belated payment as per the Division Bench judgment of this Hon'ble Court. Hence, the Petitioner is entitled to interest at the rate of 10% per annum on the belated payment, of commutation amount of pension and the balance amount of Rs. 39,118/-at the rate of 10% from 20.05.2002 to the actual payment i.e. 15.03.2004 vide proceedings in R.C. No. 9285/Na.O. Va(1)/04 dated 15.03.2004. As stated supra, the Petitioner is also entitled to interest at the rate of 10% per annum on the belated payment of DCRG amount of Rs. 47,438/-from 31.07.1994 till the date of actual payment on 15.03.2004.

21. Accordingly, there shall be a direction to the Respondents to calculate the interest for the above said period for the belated payment of DCRG and commutation of pension and other benefits and disburse the same within a period of four months from the date of receipt of a copy of this order.

22. In the result the writ petition is allowed as indicated supra. No costs.