

(2010) 07 MAD CK 0346

In the Madras High Court

Case No : Writ Petition No. 6902 of 2006 and W.P.M.P. No. 7485 of 2006

P. Nagarathna Pandian

APPELLANT

Vs

The Managing Director and The Administrative Officer

RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 309
Tamil Nadu Pension Rules, 1978 — Rule 33, 36, 38, 39, 42

Citation : (2011) WritLR 176

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : K. Rajkumar, for the Appellant; A. Vijayakumar, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—The prayer in the writ petition is to quash the order of the second Respondent dated 22.8.2005 and direct the Tamil Nadu Housing Board to disburse the arrears of leave salary, encashment of earned leave, Surrender leave, leave on private affairs, disbursement of retirement benefits such as DCRG, commuted value of pension, provident fund, special provident fund and pay 18% interest for the belated payment as held by the Supreme Court in the decision reported in 2000 (2) SLR 686.

2. The case of the Petitioner is that he was appointed as Junior Engineer on 5.3.1965; promoted as Assistant Executive Engineer on 13.6.1970; as Executive Engineer in the year 1977; and as Superintendent Engineer in the year 1994. The Petitioner attained the age of superannuation on 30.11.1998. He was not allowed to retire by passing an order of suspension on 28.11.1998 stating that while he was holding the post of General Manager(Technical) in the Tamil Nadu Adi Dravidar Housing Development Corporation on deputation, a charge memo was issued on 18.11.1998 alleging that he rejected the tender submitted by the Government of India during the process of pre-qualification bid. Petitioner submitted his explanation to the charge memo on 2.12.1998 and denied the

same. An enquiry was conducted and a report was submitted holding that the charge levelled against the Petitioner was not proved. The Housing Board accepted the Enquiry Officer's report and passed a resolution on 27.11.2003 to drop the charge framed against the Petitioner and also resolved to allow the Petitioner to retire from service with effect from 30.11.1998. The Board resolution was sent to the Government for its approval. The Government also granted approval through G.O.(ID) No. 164 Housing and Urban Development Department, dated 14.4.2004. The Board by proceedings dated 25.5.2004 passed final orders and allowed the Petitioner to retire from service from 30.11.1998 and also ordered that the period of suspension is to be treated as duty period.

3. According to the Petitioner due to the frivolous charge framed against him, he was denied the terminal benefits from 1.12.1998 for about six years and hence he is entitled to get interest for the belated payment of terminal benefits. According to the Petitioner following amounts were disbursed to the Petitioner even though the same were due as on 30.11.1998.

Particulars Amount Date of disbursement

DCRG Rs.3,20,067/- 2.8.2004 Commutation of Rs.3,99,164/- 2.8.2004 pension Spl. Provident Rs.10,058/- 19.8.2004 Fund Provident Fund Rs.1,23,234/- 16.6.2004 Surrender of Rs.1,60,784/- 30.11.2004 Earned Leave The said amounts having been paid after about a period of six years, the Petitioner has requested to sanction interest for the belated payment, which was rejected by the second Respondent through the impugned order. Hence this writ petition.

4. The Respondents have filed counter affidavit by narrating the facts as stated in the affidavit filed in support of the writ petition as stated supra. The only reason stated in the counter affidavit is that since the charge was dropped only on 25.5.2004, Petitioner's request for payment of interest for the belated payment of retirement benefits is not maintainable.

5. The learned Counsel for the Petitioner submitted that the Government issued G.O. Ms. No. 510 Finance (Pension) Department dated 27.6.1995 and ordered payment of interest for the belated payment of each retirement benefit. Apart from that even against a charged employee, the charges having been dropped, the Honourable Supreme Court in S.K. Dua Vs. State of Haryana and Another, and Division Bench of this Court in the decision reported in (2009) 3 MLJ 1 (Government of T.N. v. Deivasigamani) ordered payment of interest and held that an employee is entitled to get interest on belated payment of pension and other terminal benefits even in the absence of statutory rules under Part in of the Constitution of India and therefore the learned Counsel for the Petitioner submitted that the Petitioner is entitled to get interest for the belated payment of retirement benefits.

6. Heard the learned Counsel appearing for the Respondents.

7. The point for consideration in this writ petition is whether the Petitioner is entitled to get interest from 30.11.1998, for the belated payments of retirement benefits after he was permitted to retire by dropping the charge.

8. G.O. Ms. No. 510 Finance (Pension) Department, dated 27.6.1995 reads as follows:

GOVERNMENT OF TAMIL NADU ABSTRACT

PENSION - Tamil Nadu Pension Rules 1978 - Amendment to Rule 45 A - Orders - Issued.

G.O. Ms. No. 510 Dated 27-6-1995

Read:

G.O. Ms. No. 21397/Pension/91/Finance (Pension) dt. 10.5.91

G.O. Ms. No. 64731/Pension/93-I/Finance (Pension) dt. 19-7-93.

Order:

The following Notification will be published in the Tamil Nadu Government Gazette:

NOTIFICATION

1. In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendment to the Tamil Nadu Pension rules, 1978.

2. The amendment hereby made shall be deemed to have come into force on the 10th May 1991.

AMENDMENTS

In the said rules, in Rule 45-A, after Sub rule (1) the following sub-rule shall be inserted namely:

(1-A), The period beyond which such interest is payable, shall be as follows:

1) in the case of a Government Servant retired otherwise on superannuation and where the Death-cum-Retirement Gratuity is withheld on account of disciplinary proceeding pending against him.

a) three months from the date of retirement where the Government Servant is exonerated of all charges and where the Death-cum-Retirement Gratuity is paid on the conclusion of disciplinary proceedings.

b) three months from the date of death where the disciplinary proceedings are dropped on account of death of Government servant.

c) three months from the date of issue of orders by competent authority allowing payment of Death- cum-Retirement Gratuity where the Government Servant is

not fully exonerated on the conclusion of disciplinary proceedings and where the competent authority desire to allow payment of Death-cum-Retirement Gratuity.

2) Six months from the date of retirement of a Government Servant otherwise than on superannuation under Fundamental Rule 56(2) or 56(3) or Rules 33, 36, 38, 39 and 42 of the Tamil Nadu Pension Rules, 1978.

3) Six months from the date of death of a Government Servant while in service and where the delay is not caused on account of more than one claimant.

4) three months from the date of issue of orders revising the emoluments where the amount of Death-cum-Retirement Gratuity already paid is enhanced on account of revision of emoluments; and

5) six months from the date of absorption in the case of permanent absorption in the Public Sector Undertaking or autonomous bodies otherwise than on mass transfer (sic) or conversion of Government department or a part thereof into Public Sector Undertakings or Autonomies bodies.

(BY ORDER OF THE GOVERNOR)

S. PITCHAI,

Joint Secretary to Government

Thus it is evident that for the belated payment of terminal benefits the Petitioner is entitled to get interest as per Rule 45-A of the Tamil Nadu Pension Rules, 1978.

9. (a) In the decision reported in 2006 WLR 623 (R. Lakshmikanthan v. Government of Tamil Nadu) I had an occasion to consider similar issue and following the decisions of the Supreme Court, interest was ordered to be paid. Paragraphs 8 and 9 reads as follows:

8. (a) The Supreme Court in the decision reported in O.P. Gupta Vs. Union of India (UOI) and Others, , in paragraph 15, after taking note of the 20 years of protracted departmental enquiry, held as follows,

... It is clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not to be recognised, it would imply that the executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration.

In the said case, the Supreme Court awarded 12% interest in favour of the Appellant for the delayed payment of pension.

(b) In the decision reported in Dr. Uma Agrawal Vs. State of U.P. and Another, , the Apex Court quantified the interest as Rs.1.00 lakh for the belated payment of retirement benefits.

(c) In *State of Kerala and Others Vs. M. Padmanabhan Nair*, also the Supreme Court endorsed the findings of the High Court in payment of interest for the belated settlement of retirement benefits. Further, in paragraph 5 of the judgment, the Court observed thus,

We are also of the view that the State Government is being rightly saddled with a liability for the culpable neglect in the discharge of his duty by the District Treasury Officer who delayed the issuance of the L.P.C., but since the concerned officer had not been impleaded as a party Defendant to the suit the Court is unable to hold him liable for the decretal amount. It will, however, be for the State Government to consider whether the erring official should or should not be directed to compensate the Government the loss sustained by it by his culpable lapses. Such action if taken would help generate in the officials of the State Government a sense of duty towards the Government under whom they serve as also a sense of accountability to members of the public.

9. In this case, Petitioner's contentions in respect of the belated settlement of retirement benefits, are well founded. As observed earlier, the enquiry report having been filed as early as on 10.2.1992, there is no justification on the part of the Respondents to delay the said proceedings for over ten years. Hence I hold that the Petitioner is entitled to interest as claimed in the petition....

(b) Similar issue was considered by the Supreme Court in the decision reported in *S.K. Dua Vs. State of Haryana and Another*, . In paragraphs 13 and 14 the Supreme Court held thus,

13. ... It is not in dispute by and between the parties that the Appellant retired from service on 30-6-1998. It is also undisputed that at the time of retirement from service, the Appellant had completed more than three decades in government service. Obviously, therefore, he was entitled to retiral benefit in accordance with law. True it is that certain charge-sheets/show-cause notices were issued against him and the Appellant was called upon to show cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the Appellant that all those actions had been taken at the instance of Mr. Quraishi against whom serious allegations of malpractices and misconduct had been levelled by the Appellant which resulted in removal of Mr. Quraishi from the post of Secretary, Irrigation. The said Mr. Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the Appellant and proceedings were initiated against him. The fact remains that proceedings were finally dropped and all retiral benefits were extended to the Appellant. But it also cannot be denied that those benefits were given to the Appellant after four years.

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 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....

(c) The said decision was followed by the Division Bench of this Court in the decision reported in (2009) 3 MLJ 1 (Government of T.N. v. Deivasigamani), wherein in paragraphs 4, 5 and 7 it is held as follows:

4. Pleadings disclose that the first Respondent was due to retire on 31.01.1987, on attaining the age of superannuation. But, he was not allowed to retire on that day, on account of pending charges. On completion of the enquiry, he was dismissed from service in and by the proceedings of the District Collector, Periyar District, dated 03.09.1988. Thereafter, the Petitioner filed an appeal before the Special Commissioner and Commissioner for Revenue Administration, Madras, which was rejected on 06.11.1988. Thereafter, the Petitioner has preferred an appeal before the Government on 22.12.1988. Since no orders were passed by the Government, the Petitioner was constrained to file O.A. No. 943 of 1992 before the Tamil Nadu Administrative Tribunal, Madras for a direction, directing the Government to pass orders on his appeal. Pursuant to the order of the Tribunal, dated 17.02.1992, the Government, by its order in G.O. (2D) No. 123 Revenue Department dated 18.11.1992, have set aside the order of dismissal and allowed the Petitioner to retire from service. Though the Respondent has preferred the statutory appeal in the year 1998, the Government have taken nearly four years to pass orders on the appeal. Though, the Government have passed orders in 1992, exonerating him from the charges and allowed him to retire, pensionary and other benefits have been granted only in the year 1994, after two years. The District Collector, Erode, by impugned order, dated 18.11.1992, has disallowed interest for the belated payment of pension, Commutation of pension and other retiral benefits. However, he had recommended to the Government for sanction of interest amount of Rs. 10,381/- for the belated payment of DCRG made to the first Respondent, based on the Government Order in G.O. Ms. No. 517, Finance (Pension), dated 12.06.1987 and G.O. Ms. No. 818, Finance (Pension), dated 01.12.1988. Subsequently, G.O. (D) No. 192, dated 13.04.2007, has been passed, sanctioning payment of Rs. 11,890/-, towards interest on belated payment of Death cum Retirement Gratuity. But for the disciplinary action and erroneous dismissal, in normal course, the Respondent would have retired from service on attaining the age of superannuation and granted pension and other retiral benefits.

5. In Dr. Uma Agrawal Vs. State of U.P. and Another, , the Supreme Court held that,

...grant of pension is not a bounty but a right of the government servant. The 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.

7. In view of the judgment of the Supreme Court, it is now well settled that an employee is entitled to interest on belated payment of pension and other retiral benefits, even in the absence of statutory rules/administrative instructions or guidelines and he can make his claim for interest, under Part III of the Constitution, relying on Articles 14, 19 and 21 of the Constitution.

(d) In (2006) 6 SCC 455 (Union of India v. M.S Abdulla) the Supreme Court ordered 12% interest per annum for the belated payment of retirement benefits for a person, who voluntarily retired from service.

(e) In 2000 (2) SLR 686 (Vijay L Mehrotra v. State of U.P.) the Supreme Court ordered to pay 18% interest from the date of retirement till the date of payment of all the retirement dues.

(f) In 2002 (7) SLR 760 (Government of A.P. v. C. Purushotham) a Division Bench of the Andhra Pradesh High Court ordered 12% interest for the belated payment of terminal benefits.

(g) Same is the view taken by the Supreme Court in the decisions reported in 2003 (2) SLR 326 (H. Gangahanume Gowda v. Karnataka Agro Industries Corporation Ltd) and Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, .

10. Applying the above decisions of the Supreme Court and of this Court to the facts of this case, I hold that the Petitioner has made out a case for the grant of interest for the belated payment of retirement benefits.

11. The reason stated by the Respondents that only due to the pendency of the charge against the Petitioner payment of terminal benefits was delayed, cannot be accepted as the charge, which was found not proved was ultimately dropped. The delay in completing the disciplinary proceeding has already caused mental agony to the Petitioner after reaching the age of superannuation. The retirement benefits payable as on 30.11.1998 was delayed for about six years for which the Petitioner cannot be blamed. It is not the case of the Respondents that the disciplinary proceeding was delayed at the instance of the Petitioner. From the perusal of the typed set of papers filed, it is evident that the enquiry officer submitted his report stating that the charge was not proved. The said Enquiry Officer's report was submitted as early as on 31.8.1999. Even assuming that the pendency of the charge was not the reason for not paying the terminal benefits, there was unreasonable delay in dropping the charge, though the delay is explained in the counter affidavit. For no fault on the part of the Petitioner,

Petitioner cannot be penalised by denying interest for the belated payment of retirement benefits.

12. In view of the above findings and decisions of the Supreme Court and of this Court, the writ petition is allowed and the impugned order is set aside. The second Respondent is directed to pay the statutory interest for the gratuity amount, provident fund, special provident fund. For commutation of pension and surrender of earned leave, the second Respondent is bound to pay interest for the belated payment as per the Government Order referred above. The second Respondent is directed to comply with this order within a period of six weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed.