
(2009) 06 MAD CK 0220

In the Madras High Court

Case No : Writ Petition (MD) No. 1488 of 2005

S. Ramasubramanian

APPELLANT

Vs

Ambai Arts College

RESPONDENT

Date of Decision : 10-06-2009

Acts Referred:

Citation : (2009) 6 MLJ 816

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : R. Krishnamoorthy, for the Appellant; S. Sundar, and D. Gandhiraj, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—The present Writ Petition portrays sadly a harsh side of a retired employee who rendered unblemished 30 years of service as Assistant Librarian in the first respondent college's library. Though the writ petitioner filed writ petition seeking pensionary benefits, the first respondent college is reluctant to grant him his lawful retiral benefits even after 30 months from the date of his retirement. Hence, the present second Writ Petition filed for payment of interest on delayed retiral payment.

2. Mr. R. Krishnamoorthy, learned Counsel appearing for the petitioner submits that the petitioner after serving 30 years with the respondent Ambai Arts College without any adverse remarks, had to wait 22 months for sending the proposal of terminal benefits to the third respondent, the Regional Joint Director of Collegiate Education, Tirunelveli. Even after 30 months from the date of his retirement, the college authorities callously ignored the plight of the poor old retiree to get his retiral benefits, hence, he was forced to file first Writ Petition in W.P. No. 6101 of 2004 seeking a prayer for issuance of a Writ of Mandamus directing the first and second respondents to send the proposals of the terminal benefits of the petitioner to the third respondent. Since there has been a long delay of two and a half years in paying the legal retiral benefits of the hard earned service of 30

years, the present second Writ Petition has been filed seeking a prayer to issue a Writ of Mandamus directing the first respondent to pay interest at the rate of 12% per annum for the terminal benefits from 01.04.2002 till the date of payment for withholding the papers relating to terminal benefits of the petitioner.

3. The petitioner has served for 30 years as Selection Grade Library Assistant and retired from service of the respondent college on 31.03.2002. The respondent college is an aided educational institution governed by the Tamil Nadu Private Colleges (Regulation) Act 1976. In view of the delay of about 22 months from the date of retirement in receiving the terminal benefits of the petitioner from the first respondent, it was argued that respondents 1 and 2, namely, the Secretary and Principal of Ambai Arts College, Ambasamudram, are the two authorities responsible for preparing carefully the pension proposal and other related papers and forward the same to the third respondent. Admittedly, the petitioner was waiting for the following terminal benefits:

a) Commuted pension : Rs. 86,860/- b) Gratuity : Rs. 75,225/- c) Monthly pension arrears from 01.04.2002 onwards : Rs. 44,000/- (approx) d) Encashment of leave and other benefits : Rs. 40,000/-

The total amount is Rs. 2,46,085/-. Since there has been a long delay in sending the proposals, the petitioner has placed a number of repeated representations to the first and second respondents herein to send the proposals of terminal benefits to the third respondent. It appears that even after 22 months of retirement, the first and second respondents did not bother to send the necessary proposals of terminal benefits of the petitioner to the third respondent.

4. Therefore, the learned Counsel appearing for the petitioner brought to the notice of this Court the efforts taken by the petitioner in requesting the first and second respondents to send proposals of terminal benefits of the petitioner. Interestingly, the third respondent, the Joint Director of Collegiate Education, Tirunelveli, by his proceedings O.Mu. No. 13184/A1/2003 dated 06.11.2003, has directed the first respondent to prepare all the pension papers and proposals and forward the same consequent to the petitioners retirement within seven days to his office. A few lines from the proceedings of the third respondent dated 27.06.2003 is worth reading for the purpose of assessing the attitude of the first respondent in discharging his duty towards disbursement of the pensionary benefits to the poor retiree, which is as follows:

It is the prime responsibility and duty of the College authorities as per rule to send the proposals of the terminal benefits of the retired staff. Since S. Ramasubramaniam's proposal of terminal benefits have not been sent till date, to the third respondent from the date of his retirement on 31.03.2002, it is informed that for all the delay caused by you in not sending the proposal of terminal benefits in time, the college authorities alone will be held responsible.

5. In spite of several reminders made by the petitioner beseeching the first and second respondents to send the proposals of terminal benefits to the third

respondent, the first and second respondents have not bothered about the plight of the retired employee in getting monthly pension as they delayed to send the proposals for about 22 months, with the result, since the petitioner suffered financial hardship, mental agony and many humiliations at the hands of lenders about 30 months from the date of retirement, he filed the present writ petition seeking payment of interest on the delayed payment of pension.

6. Mr. S. Sunder, learned Counsel appearing for the first and second respondents went all out to get the Writ Petition dismissed for the following reasons:

- a) that there was no delay in sending the proposal of terminal benefits of the petitioner to the third respondent;
- b) that after submitting the proposal papers to the Joint Director of Collegiate Education on 03.10.2003, their responsibility was over;
- c) that for recovery of money the Writ Court cannot be approached only the Civil Court is the competent forum for seeking proper relief.

7. The contentions of the respondent cannot be accepted for two reasons:- Firstly, the petitioner retired from service on 31.03.2002. According to the respondents, though they submitted the proposal of terminal benefits of the petitioner on 03.10.2003 which is 19 months after the date of retirement of the petitioner they were not in order but were in defective. Therefore, the petitioner filed a Writ Petition in W.P. No. 6101 of 2004 with a prayer to issue a Writ of Mandamus directing the first and second respondents to send the proposal of terminal benefits of the petitioner to the third respondent. Therefore, it is proved that the first and second respondents have not sincerely discharged their duties in sending the proposal of the terminal benefits of the petitioner to the third respondent for getting monthly pension. Secondly, the Principal of the College / second respondent herein, whose duty is to teach the students, our future pillars of the nation, the values of education, the values of life, the values of fairness, the values of honesty, etc., had written a letter dated 17.11.2003 summoning the petitioner 20 months even after his retirement from service to come back to their college to clear some of the pending works, failing which, he was threatened that his pension papers would not be forwarded to the third respondent. This letter itself conspicuously indicates the arbitrary, unlawful and unreasonable attitude of the respondent college in not discharging the official duties of the head of the institution. On this basis, it was argued that the respondents should be held liable for payment of penal interest for the delayed pension.

8. The learned Counsel appearing for the respondents further contended that the Writ Petition filed for claiming money involved disputed questions of fact and hence, the same should not be accepted by this Court. The question involved is whether there was a delay in sending the proposal of the terminal benefits of the petitioner or not? The communication sent by the third respondent to the second respondent in proceedings dated 27.06.2003 candidly proves that there was

unexplained and unjustified delay in sending the petitioner's proposal of the terminal benefits. This has been admitted by the respondents also while saying that they had only sent the petitioner's proposal of the terminal benefits on 03.10.2003 and subsequent filing of the Writ Petition by the petitioner seeking a prayer to direct the respondents to send the proposal of terminal benefits further clearly proves the fact that the respondents have miserably neglected and committed serious dereliction of duty in sending the proposal of the terminal benefits of the petitioner to the third respondent.

9. Admittedly, the petitioner has received his pension and retirement benefits after 30 months from the date of his retirement. Whether the petitioner is legally entitled to get interest for belated payment of pension is a question to be answered in this Writ Petition. The very same similar issue not only once but on many occasions disturbed the Hon''ble Apex Court. In the case of State of Kerala and Others Vs. M. Padmanabhan Nair, , the Hon''ble Supreme Court has repeatedly held that the pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, 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.

10. The Government of Tamil Nadu by G.O.Ms. No. 1438, Education Department, dated 29.07.1980, have extended the benefit of the liberalised pension scheme to the teaching and non-teaching staff of aided colleges with effect from 02.10.1970 and 01.04.1976 respectively. Further, the Government of Tamil Nadu, by another Government Order in G.O.Ms. No. 1227, Finance (Pension) Department, dated 19.11.1985, have ordered to simplify the procedures incorporated in pension rules for the purpose of expeditious disposal of pension cases. One of the salient features of the simplified procedures as incorporated in the Pension Rules is that on 1st January and 1st July each year, every head of the department/Head of office is required to prepare a list of those Government servants who are due to retire within the next 24 to 30 months of that date and send the list to the Audit Officer not later than the 31st January or the 31st July as the case may be of that year.

11. The second salient feature is that every head of office/Unit offices will undertake the work of preparation of pension papers 2 years before the date on which a Government servant is due to retire on superannuation or on the date on which he proceeds on L.P.R. whichever is earlier.

12. In view of the earlier Government Order issued in G.O.Ms. No. 1438, Education Department, dated 29.07.1980, which extends the benefits of the liberalised pension scheme to the teaching and non-teaching staff of the aided colleges with effect from 02.10.1970 and 01.04.1976 respectively, the respondents one and two ought to have followed the same procedures and expeditiously disbursed the pension to the petitioner without any delay. In view

of the fact that the Government have liberalised the pension rules by extending the same benefits to the teaching and non-teaching staff of the aided colleges with effect from 02.10.1970 and 01.04.1976, the respondents one and two ought to have avoided the delay in sending the proposal as well as the further delay in paying the monthly pension to the petitioner.

13. In another judgment of the Hon''ble Apex Court reported in Dr. Uma Agrawal Vs. State of U.P. and Another, the Apex Court has consistently held that if rules / instructions which prescribes time schedule for settlement of retirement dues are followed strictly, the pension being not a bounty but right of the retired Government servant and on that basis further justified in awarding interest to the delayed payment of retirement benefits.

14. In yet another similar case reported in Bal Kishore Mody Vs. Arun Kumar Singh and Others, considering the delay in making payment of the retirement benefits, the Hon''ble Apex Court directed the respondents to pay interest on retiral benefits at the rate of 15% per annum.

15. The instant case is a glaring instance of such culpable delay in the settlement of pension due to the poor librarian who retired on 31.03.2002. His pension was ultimately paid to him belatedly i.e. more than 30 months after his retirement. In the meanwhile, the petitioner issued lawyer''s notice and filed two Writ Petitions i.e. one for sending the proposal of terminal benefits to the third respondent to enable him to pass orders on the proposals. Further more, the Joint Director of Collegiate Education also by his letter dated 27.06.2003 warned the college authority to face the delayed consequences in not sending the proposal in time. In spite of all these, the college Principal in his own letter dated 17.11.2003, addressed to the retired petitioner, knowing pretty well that the petitioner retired on 31.03.2002, i.e., 22 months after his retirement, unfairly called upon the retired petitioner to come back to his college to clear some of the pending works in his college, failing which, it was informed that his pension papers would not be sent to the Treasury Office. The letter dated 17.11.2003, sent by the College Principal to the petitioner precisely indicates not only the glaring instance of culpable delay in the settlement of pension due to the petitioner but also the glaring mala fide attitude of the Principal of the college in not willing to settle the retirement benefits. Further the delay was unexplained and unjustified and the college authorities are guilty of neglect in the discharge of its duties. Therefore, the claim for interest on delayed payment of pension is rightly justified. In these peculiar facts and circumstances, I am of the considered view that if interest at the rate of 12 per cent is ordered to be granted from 31.03.2002 till the date of payment of pension by the first respondent college, it would help generate in the officials concerned a sense of duty towards the Government and also a sense of accountability to the members of the public. For the reasons afore mentioned, the Writ Petition is allowed with a direction that the first and second respondents are directed to pay interest at the rate of 12% per annum on the delayed payment of pension from the date of retirement till the date of payment of

pension. The respondents one and two are further directed to pay the costs of Rs. 15,000/- to the petitioner within two months from the date of receipt of a copy of this order.