

P.V. Mahadevan Vs The Secretary to Government Housing and Urban Development Department and The Managing Director Tamil Nadu Housing Board

Court: Madras High Court

Date of Decision: July 28, 2011

Acts Referred: Constitution of India, 1950 " Article 14, 19, 21
Tamil Nadu State Housing Board Service Regulations, 1969 " Rule 37

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

Bench: Single Bench

Advocate: K. Rajkumar, for the Appellant; P.S. Sivashanmugasundaram, Additional Government Pleader for Respondent-1 and A. Vijayakumar, for Respondent-2, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K.N. Basha, J.

The Petitioner has come forward with this petition seeking for the relief of quashing the Letter of the second Respondent in

No. PT I/10265/2001 dated 22.09.2006 insofar as the denial of interest alone with a direction to the Respondents herein to award interest to the

Petitioner on the belated disbursement of all the retiral benefits and incremental arrears from the date of its due till date of its actual disbursement at

the rate of 18% per annum compounded on the quarterly rest and disburse al the accrued arrears on the above benefits within a short date.

2.0. The factual matrix in this case is hereunder:

2.1. The Petitioner joined the services in the Tamil Nadu Housing Board as an Assistant Engineer on 19.02.1965; Thereafter, he became the

Assistant Executive Engineer on 06.06.1970; as Executive Engineer on 15.06.1977; as Superintending Engineer on 24.10.1994; and lastly he has

been promoted as Chief Engineer on 12.12.2001. The Petitioner reached the age of superannuation on 28.02.2002.

2.2. The Petitioner has been served with a charge memo dated 08.06.2000 under Rule 37(b) of the Tamil Nadu State Housing Board Service

Regulations, 1969 in respect of an incident said to have been taken place in the year 1990 after the delay of more than 10 years. The Petitioner

challenged the charge memo by filing a writ petition in W.P. No. 7854 of 2001 which was dismissed on 05.11.2004. Being aggrieved against the

said order, the Petitioner preferred a civil appeal in Civil Appeal No. 4901 of 2005 and the same was allowed on 08.08.2005 by the Hon"ble

Apex Court quashing the said charge memo. The Hon"ble Apex Court in the same judgment also observed that the Petitioner is entitled to get all

the retiral benefits in accordance with law and the said retiral benefits shall be disbursed within a period of three months from the date of receipt of

a copy of the order of the Hon"bl Apex Court.

2.3. The Petitioner, therefore, is entitled to get the retiral benefits from the date of his retirement, i.e., on 28.02.2002. The second Respondent has

disbursed the retiral benefits belatedly in the following manner:

Sl. No. Particulars Date of due Date of Payment Duration of

Delay

1. DCRG 28.02.2002 April 2006 50 months
2. Commutation of Pension 28.02.2002 April 2006 50 months
3. Encashment of earn leave 28.02.2002 May 2006 51 months
4. Provident Fund 28.02.2002 June 2002 4 months
5. Special Provident Fund 28.02.2002 June 2003 16 months
6. Monthly Provisional pension arrears 28.02.2002 August 2002 8 months
7. V Pay Commission 28.02.2002 Oct.2006 55 months
8. Incremental arrears due to Notional 28.02.2002 Amount yet already 8 years

promotion in W.P. No.29395/07 crossed.

Therefore, there is delay on the part of the second Respondent in disbursing the retiral benefits. In view of such delay in disbursement of retirement

benefits, the Petitioner has suffered for settling the marriage of his daughter by borrowing huge hand loans on interest and he had paid 24% interest

on the said loan.

2.4. The Petitioner made several representation for claiming interest on the belated disbursement of the retiral benefits on various dates. The

Petitioner has to prefer a writ petition for seeking the relief of "encashment of leave on private affairs" in W.P. No. 582 of 2009 and the same was

allowed on 30.09.2009 directing the disbursement of the said amount with 18% interest p.a. by this Court.

2.5. The Petitioner, after making several representations, sent a legal notice dated 31.08.2008 seeking for the relief of payment of interest on the

belated disbursement of retirement benefits. On receipt of the said legal notice, the second Respondent herein passed an order dated 22.09.2006

rejecting the claim of the Petitioner stating that the delay is because of the pendency of disciplinary cases and as such, the Petitioner is not entitled

for interest. It is also stated in the said order that No. interest shall be payable in cases, where the delay in payment of Death-cum-Retirement

Gratuity is due to institution of departmental or judicial proceeding.

2.6. Being aggrieved against the said order, the Petitioner has come forward with this petition seeking for the above said relief.

3.0. Mr. K.Rajkumar, learned Counsel appearing for the Petitioner, would contend that the Petitioner is entitled to get the retiral benefits from the

date of his retirement, i.e., from 28.02.2002. But the benefits were given to the Petitioner belatedly as stated in his affidavit in respect of the each

benefit. It is also contended that as per the impugned order the interest claimed by the Petitioner was denied mainly on the ground of pending

disciplinary cases against him. It is stated in the impugned order that No. interest shall be paid in cases, where the delay in the payment of Death-

cum-Retirement Gratuity is due to the institution of departmental or judicial proceeding. The learned Counsel would submit that as per the

provision u/s 45(1-A) of the Tamil Nadu Pension Rules, 1978, the Petitioner is entitled to seek the relief of interest for the payment made beyond

three months from the date of retirement and as such, even the reason assigned in the impugned order for denying payment of interest is not correct

and contrary to the specific rule under the provisions of the Tamil Nadu Pension Rules, 1978. It is also contended that once the charge memo itself

is quashed, the Petitioner is deemed to have been in his original position at the time of retirement, i.e., on 28.02.2002. In support of his

contentions, learned Counsel would place reliance on the decision of the Division Bench of this Court in The Secretary, Vallalar Gurukulam Higher

Secondary School Vs. District Educational Officer and G. Anbarasan, .

3.1. The learned Counsel for the Petitioner would further contend that even in respect of the belated payment of encashment of leave on private

affairs the Petitioner has to prefer a writ petition in W.P. No. 582 of 2009 and this Court passed an order dated 30.09.2009 allowing the claim of

the Petitioner and directing the second Respondent to pay the interest at the rate of 18% p.a. within a stipulated period of twelve weeks.

3.2. The learned Counsel for the Petitioner would also place reliance on the decision of the Hon"ble Apex Court in Vijay L.Mehrotra v. State of

U.P. reported in 2000 (2) SLR 686. It is contended that the wife of the Petitioner is suffering from Brain Cancer and sofar the Petitioner has spent

a sum of Rs. 22,00,000/-towards the treatment for the survival of his wife as she has been attacked with such serious illness in the year 2006.

Therefore, it is submitted that in view of the ordeal and suffering undergone by the Petitioner and considering the mental agony of the Petitioner,

more particularly, due to the belated payment of retirement benefits, the Petitioner is entitled to seek the relief of 18% interest p.a. for belated

disbursement of retirement benefits.

4. Per contra, Mr. A.Vijayakumar, learned standing counsel for the second Respondent, would contend that there is No. illegality or infirmity in the

impugned order passed by the second Respondent rejecting the claim of the Petitioner seeking for the relief of interest on the delayed disbursement

of retiral benefits. It is contended that the delay occurred only due to the pendency of the departmental proceedings against the Petitioner. It is

further pointed out by the learned Counsel for the second Respondent that in view of the G.O.Ms. No. 527, Finance (Pen) Department, dated

15.06.1987, the Petitioner is not entitled to seek the interest in the event of delay is caused due to the pendency of the departmental proceedings.

The learned Counsel for the second Respondent would submit that a detailed counter was also filed by the second Respondent herein.

5. Heard Mr. P.S.Sivashanmugasundaram, learned Additional Government Pleader appearing for the first Respondent, on the submissions made

by the learned Counsel for the Petitioner and the learned standing counsel for the second Respondent. It is submitted that the Government has

already passed an order in G.O.Ms. No. 527 dated 15.06.1987 and as per the said Government Order, the Petitioner is not entitled to seek the

relief of interest on the belated payment of retiral benefits in view of the pendency of the disciplinary proceedings against him.

6. I have given my careful and anxious consideration to the rival contentions put forward by either side and scrutinized the entire materials available

on record and perused the affidavit filed by the Petitioner, the counter filed by the second Respondent and the rejoinder filed by the Petitioner

herein for the counter and also perused the impugned order passed by the second Respondent.

7. This is a very unfortunate case, wherein, the Petitioner has been driven from pillar to post for seeking reliefs. He has started his legal battle by

challenging the charge memo issued against him at the verge of his retirement and ultimately succeeded by filing an appeal before the Hon"ble Apex

Court. The Hon"ble Apex Court has rendered a landmark decision in his case in P.V. Mahadevan v. M.D., Tamil Nadu Housing Board reported

in 2005 (5) SC 611. It is pertinent to note that the Hon"ble Apex Court has quashed the charge memo and further held that the Petitioner is

entitled for the retiral benefits in accordance with law. It is also made clear by the Hon"ble Apex Court that the retiral benefits shall be disbursed

within a period of three months from the date of the order passed by the Hon"ble Apex Court.

8. Before proceeding to consider the core question involved in this matter to the effect that whether the Petitioner is entitled to seek the relief of

interest for the delayed payment of retiral benefits, it is relevant to state the status of the Petitioner after the charge memo issued against him was

quashed by the Hon"ble Apex Court.

9. It is well-settled that once a disciplinary proceedings or charge memo was quashed by a Court of law, the said delinquent officer is deemed to

have been in his original position. At this juncture, it is relevant to refer the Division Bench decision of this Court in The Secretary, Vallalar

Gurukulam Higher Secondary School Vs. District Educational Officer and G. Anbarasan, , wherein, the Division Bench has held as hereunder:

6.... Once a person is acquitted in a criminal case, it has to be deemed that he never committed that offence. This is because every judgment

operates retrospectively unless expressly made prospectively, unlike a legislation which normally operates prospectively unlike expressly made

retrospectively.

10. The Hon"ble Apex Court in Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh, has held as hereunder:

11.... But in this case the order of dismissal was declared invalid in a civil suit. The effect of the decree of the civil suit was that the Appellant was

never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. The effect of the adjudication of

the civil courts is to declare that the Appellant had been wrongfully prevented from attending to his duties as a public servant....

11. Therefore, the principles laid down by the Division Bench of this Court and the Hon"ble Apex Court make it crystal clear that once the charge

memo issued against a delinquent officer is quashed or once the dismissal order passed against the public servant was declared invalid in a civil

proceedings, the delinquent officer is deemed to have been in service continuously not facing any delinquency. The said principle is squarely

applicable to the facts of the instant case as in this case also the Hon"ble Apex Court has quashed the charge memo issued against the Petitioner

and as such, he is deemed to have been in service without any departmental proceedings on the date of his retirement, i.e., on 28.02.2002. In view

of the above said reasons, this Court has No. hesitation to hold that the Petitioner cannot be deprived or denied his right to claim interest for the

delayed payment of retiral benefits on the ground of pendency of disciplinary proceedings pending against him earlier.

12. Now coming to the main question involved in the matter, viz., the entitlement of the Petitioner to seek the relief of interest for the delayed

payment of retiral benefits, it is relevant to refer the impugned order. A perusal of the impugned order issued by the second Respondent dated

22.09.2006 reveals that the relief sought for by the Petitioner was denied mainly on the ground of pendency of the disciplinary proceedings against

the Petitioner and on the basis of the Government Order in G.O.Ms. No. 527 to the effect that No. interest shall be payable in cases where the

delay in the payment of Death-cum-Retirement Gratuity is due to the institution of departmental or judicial proceedings. It is needless to state that

such a Government Order cannot have a statutory force.

13. On the other hand, there is a specific rule available in the Tamil Nadu Pension Rules, 1978 as per Rule 45(1-A) of the Rules which reads

hereunder:

45-A. Interest on delayed payment of gratuity -

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

i. 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;

A reading of the above said provision makes it abundantly clear that a Government servant is entitled to seek the relief of interest in respect of the

delayed payment of Death-cum-Retirement Gratuity three months from the date of retirement.

14. The learned Standing Counsel for the second Respondent placed reliance on the second proviso to Rule 45-A(1) which reads hereunder:

Provided further that No. such interest shall be payable,

a. where the institution of departmental or judicial proceeding against the retiring Government servant concerned is pending;...

A reading of the above said proviso makes it abundantly clear that No. interest shall be payable only where the institution of departmental or

judicial proceeding against the retiring Government servant is pending. Therefore, the said provision is applicable to the government servant against

whom the disciplinary proceedings is pending at the time of retirement.

15. As far as the case of the Petitioner is concerned, admittedly he is standing on a different footing. As already pointed out, once the charge

memo issued against him has been quashed by the Hon"ble Apex Court, the Petitioner is continuously deemed to have been in service even at the

time of retirement on 28.02.2002. Therefore, I am unable to countenance with the above said contention of the learned Counsel for the second

Respondent.

16. This Court is also constrained to state that the above said statutory rules are available under the Tamil Nadu Pension Rules as far as Death-

cum-Retirement Gratuity is concerned. It is needless to state that interest claimed by the Petitioner in respect of other benefits, viz., Commutation

of Pension, Encashment of Earned Leave, Provident Fund, Special Provident Fund, Fifth Pay Commission arrears, Pension Arrears, Incremental

arrears, etc., has to be considered by the authorities concerned in the light of the principle laid down by the Hon"ble Apex Court in a catena of

decisions.

17. At this juncture, it is relevant to refer the decision of the Hon"ble Apex Court in S.K. Dua Vs. State of Haryana and Another, . The Hon"ble

Apex Court in the said decision has held as hereunder:

14. In the, 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 circumstances 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.

18. The above said principle laid down by the Hon"ble Apex Court is also followed by a Division Bench of this Court in Government of Tamil

Nadu v. M.Deivasigamani reported in 2009 (3) M.L.J. 1, wherein, the Division Bench has held as hereunder:

7.... An employee is entitled to claim interest on belated payment of pension and other retrial 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 of India relying on Articles

14, 19 and 21 of the Constitution of India

19. In view of the principles laid down by the Hon"ble Apex Court and the Division Bench of this Court, this Court has No. hesitation to hold that

the Petitioner is entitled to seek the relief of interest.

20. Let me now consider the rate of interest for which, the Petitioner is entitled to seek for the belated disbursement of the retrial benefits. The

Petitioner has claimed interest of 18% p.a., for such delay caused on the part of the second Respondent herein. It is pertinent to note that even in

respect of one of the retirement benefits, viz., "encashment of leave on private affairs", the Petitioner has to approach this Court by filing a writ

petition in W.P. No. 582 of 2009 and this Court passed an order dated 30.09.2009 directing the very same second Respondent herein to grant

the relief of interest at the rate of 18% per annum from the date of retirement, i.e., from 28.02.2002 till the date of payment, i.e., on 09.09.2009

and further directed that the said interest shall be paid within twelve weeks from the date of receipt of a copy of that order. It is also brought to the

notice of this Court that the said order of this Court was complied with by paying 18% interest for such delayed disbursement in payment.

Therefore, it is very clear that the rate of interest fixed by this Court is binding on the second Respondent even in respect of interest claimed by the

Petitioner for other benefits. The said order of this Court passed by the learned Single Judge, as stated above, has also reached finality as the same

was not challenged by the second Respondent and the same was complied with.

21. In view of the aforesaid reasons, this Court is constrained to set aside the impugned order and accordingly, the impugned order dated

22.09.2006 passed by the second Respondent herein in Letter No. PT-1/10265/2001 is hereby set aside. Consequently, the second Respondent

herein is directed to pay interest at the rate of 18% per annum for the delayed disbursement of retrial to the Petitioner. 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.

This petition is ordered accordingly. No. costs.