

(2011) 07 MAD CK 0316

Madras High Court

Case No: Writ Petition No. 25973 of 2005

P.O. Varghese

APPELLANT

Vs

The Secretary to Government
Home (Police IV) Department,
The Director General of Police
and The Commissioner of Police

RESPONDENT

Date of Decision: July 7, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 21

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

Bench: Single Bench

Advocate: Sudha Ravi, for Sudha Ravi Associates, for the Appellant; P.S. Sivashanmugasundaram, Additional Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.N. Basha, J.

The Petitioner has come forward with this petition seeking for the relief of direction to the Respondents to pay 12% interest on the entire retirement benefits of Rs. 6,17,842/- for the delayed period from 01.10.1998 the next day of the Petitioner's actual date of retirement till 31.08.2004.

2. The case of the Petitioner is that he joined the police service as Grade II Police Constable in the year 1963 and promoted as Grade I Police Constable in the year 1972 and there after, he was promoted as Head Constable in the year 1978 and promoted as Sub-Inspector in the yer 1984. He had unblemished record of service of more than 36 years.

3. The Petitioner served with a charge memo dated 05.12.1994 on 02.02.1995 on the allegation that he has demanded and accepted an illegal gratification from one Dr.

P. Rajendra Prabu on 29.09.1992. The Petitioner was due to retire on attaining the age of superannuation on 30.09.1998 and on 16.09.1998, he was placed under suspension. The Petitioner was also not permitted to retire by the order dated 26.09.1998.

4. In the disciplinary proceedings, the charge levelled against the Petitioner was held to have been proved. The Petitioner was asked to submit further explanation for the enquiry report and accordingly, he submitted his explanation on 21.04.1999. On 02.09.1999, the Director General of Police passed the final order imposing major punishment by removing the Petitioner from his service.

5. The punishment order was challenged by the Petitioner by filing an Original Application in O.A. No. 5400 of 1999 before the Tamil Nadu Administrative Tribunal and the same was allowed by the Tribunal on 09.08.2001 by setting aside the order of removal from service passed by the Director General of Police. The Tribunal had also held that the Petitioner was entitled to all the service benefits. The said order was received by the Respondents through a special messenger on 19.08.2001. But the order of the Tribunal was not implemented within a reasonable time and it was implemented only over a period of two years and nine months. For the said administrative delay of two years and nine months, the Petitioner is entitled to the interest of 12% on the entire retirement benefit for the delay period of payment.

6. The Petitioner was paid an amount of Rs. 1,28,651/- on 23.06.2004 as Death-cum-Retirement Gratuity and an amount of Rs. 1,60,661/- as commuted value of pension. An amount of Rs. 39,651/- was paid to him as encashment of Earned Leave on 09.09.2004. The amount of arrears of pension due from October 1998, namely, Rs. 2,88,879/-, was paid in September 2004. For the entire retirement benefits which come to a total amount of Rs. 6,17,842/-, the Respondent herein are liable to pay 12 % interest with effect from 01.10.1998, the next date of the Petitioner's actual retirement date.

7. The Petitioner preferred a representation dated 16.06.2005 claiming interest as stated above. But till date there is no response for the payment of claim of interest made by the Petitioner. Therefore, the Petitioner has come forward with the present petition with the above said prayer.

8. The learned Counsel for the Petitioner would contend that there was a delay of more than two years in payment of the retirement benefits and as such, the Petitioner has preferred the representation dated 16.06.2005, but in spite of the same, the request of the Petitioner was not considered by the Respondents herein. It is contended that in view of the delayed payment of retirement benefits, the Petitioner is entitled to 12% of interest. The learned Counsel for the Petitioner in support of her contentions would place reliance on the Division Bench decision of this Court in Govt. of Tamil Nadu Vs.M. Deivasigamani reported in 2009 (3) MLJ 1 (HC).

9. Per contra, Mr. P.S. Sivashanmugasundaram, learned Additional Government Pleader appearing for the Respondents, would submit that there is no lapse on the part of the Respondent in making payment of retirement benefits. It is submitted that soon after the receipt of the orders of the Tribunal, the Petitioner was allowed to retire with effect from 30.09.1998. It is contended that after adhering to the procedural regularities, the order of the Tribunal was rightly implemented. The learned Additional Government Pleader would further contend that there is no deliberate or wanton delay in disbursing the retirement benefits of the Petitioner on the part of the Respondents and as such, the Petitioner is not entitled to claim any interest.

10. I have carefully considered the rival contentions put forward by either side and scrutinized and perused the affidavit, and counter affidavit etc.

11. The fact remains that the Petitioner was allowed to retire as early as on 30.09.1998. But the retirement benefits have been paid on 23.06.2004. A perusal of the counter would disclose that the Respondents have not come forward with any proper explanation for such a delay of more than a period of two years except stating that the delay occurred due to the procedural process and the same is not willful and deliberate. I am unable to countenance with such contention and claim of the Respondents for the simple reason that the department could not have taken such a long time under the guise of procedural process to disburse the retirement benefits of a government servant. The explanation offered by the Respondents is nothing but a bald and vague one and what sort of process took such a long time is not all stated in the counter. Therefore, there is absolutely no justification for inordinate delay in disbursing the retirement benefits to the Petitioner and as such, the Respondents are liable to pay interest at the rate of 12% to the said delayed payment.

12. It is also relevant to note that the Division bench of this Court in Govt. of T.N. Vs.M. Deivasigamani reported in 2009 (3) MLJ 1 (HC) referred the decision of the Hon"ble Apex Court in a Dr. Uma Agarwal v. State of U.P. reported in 1999 (3) MLJ 29 (SC), wherein, it was held that,

4. ...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 pyment, the Court can certainly keep in mind the time-schedule prescribed in the Rules/Instructions apart from other relevant factors application to each case.

13. The Hon"ble Apex Court in a subsequent decision in [S.K. Dua Vs. State of Haryana and Another](#), has held as hereunder:

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. 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.

14. The principles laid down by the Hon"ble Apex Court in the decision cited supra makes it crystal clear that the employee is entitled to the interest for delayed payment of pension and other benefits even in the absence of statutory rules/administrative instructions or guidelines and such employee can very well claim for interest under part III of the Constitution.

15. In view of the aforesaid reasons, this writ petition is allowed. Consequently the second Respondent herein is directed to pay 12 % interest for the entire retirement benefits of Rs. 6,17,842/- for the delayed period from 01.10.1998 the next day of the Petitioner"s actual date of retirement dated to 31.08.2004. It is made clear that the said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. No costs.