

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WA.No. 959 of 2010 () IN WP(C).33580/2009

AGAINST THE JUDGMENT IN WP(C) 33580/2009 of HIGH COURT OF KERALA
DATED 17-12-2009

APPELLANT(S)/RESPONDENT IN THE WRIT PETITION :-

THE MANAGING DIRECTOR,
KERALA WATER AUTHORITY, THIRUVANANTHAPURAM

BY ADVS.SRI.JOSEPH JOHN, SC, KERALA WATER AUTHORITY

RESPONDENT(S)/PETITIONER IN THE WRIT PETITION :-

A.RAVEENDRAN, AGED 58 YEARS, S/O.KUNHIRAMAN,
RESIDING AT 'SRUTHI' CHUNDA PO
MOTTAMMAL, KANNUR DT.

BY ADV. SRI.KALEESWARAM RAJ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

**ASHOK BHUSHAN, Ag. C.J &
A.M. SHAFFIQUE, J.**

W.A. No.959 of 2010

Dated this the 23rd day of February 2015

J U D G M E N T

Ashok Bhushan, Ag.CJ

Heard Sri.Joseph John, the learned counsel appearing for the appellant and Sri.Kaleeswaram Raj, the learned counsel appearing for the respondent/writ petitioner.

2. This writ appeal has been filed against the judgment dated 17.12.2009 passed by the learned Single Judge in W.P.(C) No.33580 of 2009, by which, the learned Single Judge has directed the respondent to pay the DCRG due to the petitioner along with interest at the rate of 9% along with the payment within two months. Admittedly, the DCRG as directed to be paid by the learned Single Judge has already been paid. The only issue raised in the writ appeal is regarding the direction for payment of interest.

3. Learned counsel for the appellant submits that the learned Single Judge has, in the judgment, held that there was culpable delay in the settlement of the legitimate dues of the petitioner, for which, the petitioner is entitled to be compensated.

It is submitted that the writ petitioner had submitted defective papers, which after being detected was returned for submission of correct papers, which took some time, for which, the appellant cannot be blamed and the petitioner himself be blamed for not submitting the correct pension papers before the authority.

4. The learned counsel has referred to a statement dated 16.2.2015, which has been filed in this appeal. We have gone through the statement submitted by the appellant. On a perusal of the statement, it does appear that there was defect in the papers submitted by the writ petitioner, but the authority took an unduly long period in rectifying the defect. Internal correspondence between various authorities regarding the papers have been referred to in the said statement. From the facts brought on record, it does appear that the delay in payment of DCRG cannot be entirely held due to lapses on the part of the appellant. The petitioner has also some part of the blame in not submitting correct papers.

5. Learned counsel for the respondent/writ petitioner has relied upon the judgment of the Apex Court in **D.D.Tewari (Dead) through Legal representatives v. Uttar Haryana Bijli Vitran Nigam Limited and others** [(2014) 8 SCC 894], wherein it was held that the denial of interest from date of entitlement till

date of payment has resulted in miscarriage of justice as direction was issued to pay within six weeks, failing which interest at the rate of 18% was to be paid. The learned counsel has referred to paragraphs 6 and 7, wherein it was held as follows :-

"6. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned Single Judge after adverting to the relevant facts and the legal position has given a direction to the respondent employer to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgment referred to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.

7. It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972. Having regard to the facts and circumstances of the case, we do not propose to do that in the case in hand."

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6. There cannot be any dispute to the proposition as laid down by the Apex Court in the said judgment. In each case, where delay has been caused in payment of retirement benefits has to be looked into on its own facts and circumstances. In this case, there are lapses both on the part of the petitioner and the authority. Hence, we are of the view that, interest has to be adjusted accordingly.

Under such circumstances, we are of the view that interest of justice can be shown in modifying the judgment of the learned Single Judge to the effect that the appellant shall pay half of the interest as directed by the learned Single Judge to the writ petitioner within a period of two months from this date. The appellant shall make the payment as directed above.

The writ appeal is disposed of as above.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE