

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.10.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Appeal No.1272 of 2017
C.M.P.No.17658 of 2017

1. The Commissioner
Corporation of Chennai
Rippon Building
EVR Salai, Chennai - 600 003.
2. The Superintending Engineer
Bridges Department
Corporation of Chennai
Chennai - 600 003. Appellants/Respondents

vs.

E.Manickam Respondent/Petitioner

Writ Appeal is filed under Clause 15 of Letters Patent, against the order, dated 08.08.2016, made in W.P.No.2102 of 2015.

W.P.No.2102 of 2015:

Petition filed under Article 226 of the constitution of India praying for a writ of Mandamus directing the respondents herein to pay interest at the rate of 12% per annum on the withheld DCRG amount from the date on which it was withheld till the date of actual payment of the same and also interest at the rate 12% per annum on the release of 25% of petitioner withheld pension.

For Appellants : Mr.V.C.Selvasekaran
For Respondent : Mrs.Rita Chandrasekaran
for M/s.Aiyar & Dolia

JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR,J)

Challenge in this Writ Appeal is to an order, made in W.P.No.2102 of 2015, dated 08.08.2016, by which, a learned single Judge has issued a Mandamus to the appellants herein, directing them to pay interest at the rate of 12% per annum for the belated disbursement of 25% of DCRG and Pension,

payable to the respondent, from the date of his retirement, till 17.11.2014, the date on which, the amount thereof have been disbursed to him, within a period of two months from the date of passing of the order.

2. Short facts leading to the appeal, are as follows:

The respondent, a Senior Citizen, aged about 75 years, retired from service on 31.07.1998, as an Executive Engineer, vide proceedings, dated 31.07.1998, of the Commissioner, Corporation of Chennai, Chennai, first respondent herein. On his retirement, his pension was fixed at Rs.6,138/- and DCRG of Rs.2,34,944/- was sanctioned to him. After deducting a sum of Rs.58,726/- from the DCRG, towards any probable pecuniary loss caused to the appellants-corporation, he was paid only Rs.1,76,208/-, out of Rs.2,39,944/-, vide proceedings, dated 05.12.1998 of the first appellant herein.

3. Thereafter, a further 25% of the amount was deducted from the DCRG payable to the respondent and he was actually paid only Rs.1,32,156/-. Thus, a total sum of Rs.1,02,788/- was withheld by the first appellant. As regards pension, though a sum of Rs.6,138/- per month, was sanctioned, the respondent was permitted to draw only a sum of Rs.4,603/-, on the basis of an audit objection, for the year 1995-1996. The audit objection was to the effect that the arrears paid to the respondent for acquiring Master Degree in Town Planning and that the pay fixation arrears had been claimed together.

4. According to the respondent, he was sponsored by the Corporation of Chennai, for pursuing his Masters' Degree in Town Planning, by granting leave and he completed it, during the year 1983 and therefore, he is eligible for getting the advanced increment, on the basis of G.O.Ms.No.2441, RD & LA Department, dated 13.11.1973 and his pay has been properly fixed. When the respondent is no way responsible for the alleged irregularities pointed out by the audit team, withholding of 25% of the pension and more than 25% of the DCRG, payable to him, after his retirement, amounts to imposition of punishment, without any notice or enquiry.

5. Therefore, the respondent made several representations to the appellants and ultimately, by proceedings, dated 16.10.2014, of the Deputy Commissioner (R&D) General Department (Pension Section), Corporation of Chennai, the respondent was sanctioned the payment of withheld DCRG and withheld 25% of the pension and it was paid to him on 17.11.2014, with arrears from 01.08.1998.

6. According to the respondent, there was an inordinate delay in sanctioning and paying the withheld terminal benefits. Hence, the respondent submitted a representation, dated 25.11.2014, to the appellants, for interest, at the rate of 12% per annum, on the amount of withheld DCRG, from the

date, on which, the amount was withheld, till the date of actual payment together, with the delayed payment of 25% of the withheld pension. In this regard, the Superintending Engineer, Bridges Department, Corporation of Chennai, Chennai, second appellant herein, sent a reply, dated 29.12.2014, to the respondent, explaining the circumstances, which led to the delay in paying the withheld DCRG and pension.

7. The respondent filed W.P.No.2102 of 2015, for a Mandamus, directing the appellants herein to pay interest, at the rate of 12% per annum, on the withheld DCRG amount from the date, on which, it was withheld, till the date of actual payment of the same and also interest, at the rate of 12% per annum, on the release of 25% of his withheld pension. According to the respondent, the delay in disbursement of the amount towards DCRG and pension, was attributable only on the part of the appellants, for which, he cannot be penalised. As per the various orders of the Government, if there is delay in settling the terminal benefits, either in full or in part, the government servant is entitled to payment of interest.

8. Before the writ Court, the learned counsel, who appeared on behalf of the respondent, submitted that the delay in settling the terminal benefits is attributable, on the part of the appellants and therefore, they are liable to pay interest for the delayed payment. He has placed reliance on a decision of the Hon'ble Supreme Court in Dr.Uma Agarwal vs. State of U.P. and another reported in 1999(3) SCC 438, wherein, it has been held that the process of payment ought to have been initiated two years in advance of the retirement of the petitioner therein, but such a process has been initiated four years after her retirement. In Dr.Uma Agarwal's case, it has been held that such delay cannot be excused, quantified the payment, payable towards interest at Rs.1,00,000/-. It was also the contention of the learned counsel appearing for the respondent before the writ Court that as per Rule 45-A of the Tamil Nadu Pension Rules, the respondent is entitled for payment of interest for the delayed disbursement of pension.

9. Before the writ Court, the appellants herein have filed a counter affidavit, contending inter alia that due to the objection raised by the audit team, a part of the amount payable to the respondent, towards DCRG and pension were withheld and in such an event, the respondent is not entitled for payment of interest.

10. According to the appellants, though the Government, by G.O.Ms.No.2441, RD & LA Department, dated 13.11.1973, have granted two advance increments, upon acquiring post graduate qualification, during the year 1983, the Government, by issuing G.O.Ms.No.842, P & AR (FR II) Department, dated 05.09.1983, has replaced the scheme of sanction of two advance increments, by a scheme of sanction of lumpsum grant, subject

to several conditions and one such condition was that where the Government had spent money on any officer, by giving him study leave and allowance or treating the study period, as duty with full pay and allowances, for acquiring the special qualifications, he is not entitled to the said benefit. During the said period, the respondent had acquired M.E. Degree, as a sponsored candidate, with pay and leave.

11. Thereafter, by introduction of G.O.Ms.No.1159, P & AR (FR II) Department, dated Nil.1984, the said scheme was reviewed and withdrawn. However, the Government letter clarified that the conditions specified in G.O.Ms.No.843, were not cancelled and hold good for sanctioning advance increment, on or after 05.09.1983. Due to which, the respondent was not sanctioned the advance increment, till 1994. However, pursuant to the order of this Court in W.P.No.22933 of 2007, dated 07.01.2009, observing that the clarification issued in the form of letter, cannot be allowed to either overtake or override the Government Order, issued in the matter, the Government have issued G.O.Ms.No.97, P & AR (FR-II), dated 05.07.2010, amending G.O.Ms.No.1159, as follows:

"Where the Government has spent money on any officer, by giving him study leave and allowances or has treated the study period as duty with full pay and allowances for acquiring the special qualification or where the special qualification other than Account Test for Subordinate Officers, Part-I, is made essential for further promotion, he is not entitled to the benefit to the order issued in G.O.Ms.No.1159, P & AR (FR II) of 1984."

12. Before the writ Court, the appellants have further submitted that after issuances of G.O.Ms.No.97, it was clear that the sponsored candidates were also eligible for advance increment and thereafter, audit objection of the respondent was deleted and payment withheld by the appellants was released. Under the above circumstances, the appellants have prayed to reject the prayer sought for, in the writ petition.

13. After hearing both the parties and materials on record, vide order, dated 08.08.2016, the writ Court ordered as follows:

"4. I heard the learned counsel for both sides and perused the materials placed on record. Admittedly, the petitioner retired on 31.07.1998 and after his retirement, the respondents have withheld 25% of the payment payable towards DCRG and 25% of the pension payable to him purportedly on the basis of an audit objection. Ultimately, such amount withheld from the petitioner has been paid to him on 17.11.2014 viz., after a period of 16 years from the date of his retirement. In such circumstances, whether the department is liable to pay interest for the delayed settlement of the terminal benefits or

not is the question that arise for consideration in this writ petition. To consider the same, the following decisions would be relevant to be quoted.

5. The Honourable Supreme Court in the case of (Dr. Uma Agarwal vs. State of U.P. and another) 1999 (3) Supreme Court Cases 438, which was relied on by the learned counsel for the petitioner, held that when there is delay in disbursement of the pensionary benefits, the department is liable to pay interest thereof. In Para No.5 to 7 of the said case, it was held as follows:-

"5. If rules/instructions which prescribe time schedule for settling of retirement dues, are followed strictly, much of litigation can be avoided and retired government servants would not feel harassed. Pension is not a bounty but right of a government servant. Government is obliged to follow rules. Delay in settling 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 indeed is unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind time schedule prescribed in the rules/instructions, apart from other relevant factors applicable to a case.

6. The present case is a clear example of inexcusable department delay. Respondents contend that letters were sent to the petitioner after her retirement seeking some information for settling her retirement dues but this is denied by the petitioner. Even if it is assumed that such letters were sent, this cannot be an excuse for lethargy of the department because rules/instructions provide for initiation of process much before retirement. The exercise which was to be completed much before retirement was in fact started long after petitioner's retirement.

7. This is a fit case for awarding interest to the petitioner. It is however not necessary that the matter should go back to the Government for computation of interest. Instead, on the facts of this case, interest is quantified at Rs.1 lakh. The same shall be paid to the petitioner within two months."

6. Similarly, in the case of (D.D. Tewari (dead) through legal representatives vs. Uttar Haryana Bulivitrans Nigam Limited and others) (2014) 8 Supreme Court Cases 894 the Honourable Supreme Court held that denial of interest from the date of entitlement till the date of actual disbursement would take away the valuable rights of the retired government servant. It was reiterated in that

decision that pension and gratuity are not bounty to be distributed by Government to its employees on their retirement, but are valuable rights and property in its hands and any culpable delay in settlement and disbursement thereof is to be visited with penalty of payment of interest.

7. In the case of (State of Kerala and others vs. V. Padmanabhan Nair) (1985) 1 Supreme Court Cases 429, it was held that prompt payment of retirement benefits is the duty of the Government and any failure in that direction will entail the Government liable to pay penal interest to the government servant. It was further held that gratuity should be paid on the date of retirement or on the following day and pension should be paid at the expiry of the following month. In that case, the Supreme Court, finding that there was delay in disbursement of the terminal benefits, directed the respondents therein to disburse the pensionary benefits with interest at the rate of 6% per annum.

8. Applying the ratio laid down by the Honourable Supreme Court in the above cases to the facts of this case, there is a delay of around 16 years in settling the terminal benefits payable to the petitioner. Such a delay is not attributable on the part of the respondents. It is contended by the respondents that the delay has occurred due to an audit objection. Such a contention on the part of the respondents cannot be countenanced. This Court is of the view that the delay on the part of the respondents in settling the withheld portion of the DCRG and pension payable to the petitioner for about 16 years purportedly due to audit objection cannot be accepted. Further, Rule 45-A of the Tamil Nadu Pension Rules as amended from 20th February 1995 provides for granting interest at the rate of 12% per annum if the terminal benefits are delayed. Therefore, I am of the view that the petitioner is entitled for payment of interest for the belated disbursement of the terminal benefits at the rate of 12% per annum.

9. In the result, the writ petition is allowed and a Mandamus is issued to the respondents directing them to pay interest at the rate of 12% per annum for the belated disbursement of 25% of DCRG and Pension payable to the petitioner from the date of his retirement till 17.11.2014, the date on which the amount thereof have been disbursed to the petitioner. No costs. Having regard to the fact that the petitioner is aged 75 years, the respondents are directed to pay the interest as indicated above to the petitioner within a period of two months from the date of receipt of a copy of this order."

14. Reiterating the averments made in the counter affidavit, grounds have been urged in the instant writ appeal.

15. Added further, learned counsel for the appellants submitted that insofar as the order pertaining to payment of interest on the delayed disbursement of DCRG benefits, is concerned, the same has been done. But in respect of interest on belated payment of pension, as there are no rules, clarification is sought for, from the Government.

16. Let me now consider some of the decisions, in support of the relief sought for in the writ petition, ie., payment of interest.

(i) In *Dr. Uma Agarwal v. State of U.P.*, reported in (1999) 3 SCC 438, 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."

(ii) In *Vijay L. Mehrotra v. State of U.P.*, reported in 2000 (2) SLR 686, the appellant therein retired from service on 31st August, 1997. The retiral benefits, such as, GPF, GIS, Encashment of Leave, Arrears of pay, Gratuity and Commuted value of Pension, were paid long after she retired. Observing that in case of an employee, retiring after having rendered service, it is expected that all the payments of the retiral benefits should be paid, on the date of retirement or soon thereafter, if for some unforeseen circumstances, the payments could not be made on the date of retirement, the Hon'ble Supreme Court directed the respondent therein to pay to the retired employee, interest at the rate of 18% on the belated payment from the date of retirement, till the actual payment was made.

(iii) In *Gorakhpur University v. Dr. Shitla Prasad Nagendra* reported in 2001 (6) SCC 591, the retiral benefits of the respondent therein were withheld to adjust certain disputed amounts from a Professor for overstaying in the University, during his appointment as Vice-Chancellor in another University. After completion of his tenure as Vice Chancellor, he assumed his original post, ie., as Professor in the University, in which, he had worked earlier and continued to service till 11.1.90, the date, on which he attained the age of superannuation. During his overstay, nominal rent was

accepted from him and no legal action was taken to recover possession of the quarters. No notice was issued, fixing his liability for payment of penal rent. When disbursement of retiral benefits, including fixation and disbursement of pension, was delayed, a writ petition was filed before the Allahabad High Court and that the same was opposed by Gorakhpur University, the appellant before the Apex Court. It was the contention of the appellant that the professor had not vacated the quarters held by him, when he retired and within the permissible extended period and therefore, he was liable for payment of penal rent in respect of such accommodation and as a matter of fact, the Finance Controller, Officer of Directorate of Higher Education, U.P., who examined his pension papers, ordered on the recommendation of the university-authorities, adjustment of Rs.3,20,638.04 from the amounts due, towards the retiral benefits. Applying the principles of *Som Prakash v. Union of India* reported in 1981 (I) LLJ 79 (SC) and *R.Kapur v. Director of Inspector (Painting and Publication) Income Tax and Another* reported in (1995) I LLJ 884 (SC), the High Court overruled the objections of the University, holding that the pension and other retiral benefits cannot be withheld or adjusted or appropriated for the satisfaction of any other dues outstanding against the retired employee. It was further held that the action of the university authorities was illegal and while allowing the claim of the first respondent-Professor, a direction was also issued to pay the entire pension and Provident Fund etc., due to him, with penal interest @ 18% within two months from the date of the order. While testing the correctness of the order, the Hon'ble Supreme Court, at Paragraph 5, held as follows:

"5. We have carefully considered the submissions on behalf of the respective parties before us. The earlier decision pertaining to this very university reported in *S.N.Mathur* is that of a Division Bench rendered after considering the principles laid down and also placing reliance upon the decisions of this *R.Kapur* which, in turn, relied upon earlier decisions in *State of Kerala v. M.Padmanabhan Nari* and *Som Prakash*. This court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement thereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards Provident fund, which is rendered immune from attachment and deduction or adjustment as

against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet another decision of a different Division Bench of the very High Court rendered without taking note of any of the earlier decisions of this court but merely proceeding to decide the issue upon equitable considerations of balancing conflicting claims of respective parties before it does not improve the case of the appellant any further. Reliance placed for the appellant university on the decision reported in Wazir Chand does not also sound well on the facts and circumstances of this case. It is not clear from the facts relating to the said decision as to whether the person concerned was allowed to remain in occupation on receipt of the normal rent as in the present case. As noticed earlier, the case of the contesting respondent in this case is that the university authorities regularly accepted the rent at normal rates every month from the petitioner till the quarters was vacated and that in spite of request made for the allotment of the said quarters in favour of the son of the respondent, who is in the service of the university, no decision seems to have been taken and communicated though it is now claimed in the Court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolutions of the university resolving to waive penal rent from all Teachers as well as that of the Executive Council dated 18.7.1994 and the actual such waiver made in the case of several others cannot be easily ignored. The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondents or fix liability or determine the so-called penal rent after giving prior show-cause notice or any opportunity to him before ever even proceeding to recover the same from the respondents renders the claims for penal rent not only a seriously disputed or contested claim but the university cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory standards. The facts disclosed also show that it is almost one year after the vacation of the quarter and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the respondent itself was again seriously disputed and to some extent justifiably too, the appellant cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due

and unquestionably payable to the respondent before us. The claims of the university cannot be said to be in respect of an admitted or conceded claim or sum due. Therefore, we are of the view that no infirmity or illegality could be said to be vitiated the order, under challenge in this appeal, to call for our interference, apart from the further reason that the disbursements have already been said to have been made in this case as per the decision of the High Court."

(iv) In the decision reported in *R.Lakshmikanthan v. Government of Tamil Nadu* reported in 2006 WLR 623, this Court had an occasion to consider a similar issue and following the decisions of the Hon'ble Supreme Court, which are also extracted hereunder, interest was ordered to be paid. At Paragraphs 8 and 9, this Court, held as follows:

"8. (a) The Supreme Court in the decision reported in (1987) 4 SCC 328 (*O.P.Gupta v. Union of India*), 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 (1999) 3 SCC 438 (*Dr.Uma Agrawal v. State of U.P.*), the Apex Court quantified the interest as Rs.1.00 lakh for the belated payment of retirement benefits.

(c) In (1985) 1 SCC 429 (*State of Kerala v. 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."

(v) In S.K.Dua v. State of Haryana reported in 2008 (3) SCC 44, the appellant therein was served with three charge sheets/show cause notices in June 1998, few days before his retirement. However, he retired on 30.06.1998 on reaching the age of superannuation. He was paid provisional pension, but other retiral benefits were not given to him, which included commuted value of pension, leave encashment, gratuity, etc. They were withheld till the finalisation of the disciplinary proceedings. While answering the issue as to whether the appellant therein was entitled to interest on delayed payment of retiral benefits, in the absence of any statutory rules/administrative instructions or guidelines, the Supreme Court, at Paragraph 14 of the judgment, held as follows:

"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 the 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."

(vi) In Govt., of T.N., v. M.Deivasigamani reported in 2009 (3) MLJ 1, the first respondent-employee therein was not permitted to retire, in view of the disciplinary proceedings,

which was set aside in the year 1992, though he was due to retire on 31.01.1987, on attaining the age of superannuation. Earlier, the first respondent therein was dismissed from service and aggrieved by the same, he preferred an appeal before the Special Commissioner and Commissioner for Revenue Administration, Madras, which was rejected on 06.11.1988. Thereafter, he preferred an appeal before the Government on 22.12.1988. 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, set aside the order of dismissal and allowed the petitioner to retire from service. In the above reported judgment, though he had preferred the statutory appeal in the year 1998, the Government have taken nearly four years to pass orders on the appeal. Thereafter, the Government took further period of two years for disbursement of retiral benefits. It was the case of the Government before the Division Bench that insofar as belated payment of DCRG, recommendations were made for sanction of interest, but for other retiral benefits, including pension, commutation of pension, interest cannot be granted. Following the decisions of the Apex Court in Dr.Uma Agarwal v. State of U.P., reported in (1999) 3 SCC 438 and S.K.Due v. State of Haryana reported in 2008 (3) SCC 44, the Division Bench of this Court held that,

"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 claim for interest, under Part III of the Constitution, relying on Articles 14, 19 and 21 of t can make his he Constitution."

(vii) In W.P.No.582 of 2009, dated 30.09.2009 [P.V. Mahadevan v. The Secretary to Government, Housing and Urban Development Department], the petitioner therein was a retired Chief Engineer from Tamil Nadu Housing Board, who attained the age of superannuation. However, the benefit of encashment of leave, to which, he was entitled, as per G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996, was not disbursed in time, inspite of repeated representations. Hence, he preferred a writ petition for a direction to sanction encashment of leave on private affairs due to him and disburse the arrears together with interest, at the rate of 18% on the belated payment of arrears. A learned Single Judge of this Court, after considering the decision in Vijay L. Mehrotra's case, has directed the Managing Director, Tamil Nadu Housing Board, to pay simple interest on the amount unpaid to the petitioner therein at 18% per annum from the date of attaining the age of superannuation, till the actual payment.

(viii) In P.Nagarathna Pandian v. M.D., TNHB, reported in 2010 (7) MLJ 577, the issue which came up for consideration before this Court was whether the Government servant is

entitled to interest for belated payment of retirement benefits, after he was permitted to retire by dropping the charges. The reason stated by the respondents therein was that only due to the pendency of the charge against the petitioner therein, payment of terminal benefits was delayed. There was a delay of six years in disbursement of the retiral benefits. In the above reported case, when the petitioner therein was holding the post of General Manager (Technical) in Tamil Nadu Adi Dravidar Housing Development Corporation on deputation, a charge memo was issued on 18.11.1998, alleging that he had rejected a tender submitted by the Government of India, during the process of pre-qualification bid. The petitioner therein submitted his explanation to the same. Enquiry was conducted and that a report was also submitted, holding that the charge levelled against him as 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 him and also resolved to allow him to retire from service with effect from 30.11.1998. The Board resolution was sent to the Government for its approval. After nearly six years, the Government granted approval through G.O.(1D)No.164 Housing and Urban Development Department, dated 14.4.2004. Thereafter, by proceedings, dated 25.5.2004, the Board passed final orders, allowing the petitioner to retire from service, with effect from 30.11.1998 and also ordered that the period of suspension would be treated as duty period. Subsequently, DCRG, Commutation of pension, Spl. Provident Fund, Provident Fund and Surrender of Earned Leave, were disbursed to the petitioner, even though the same were due from 30.11.1998, the date on which, he attained the superannuation. The request for sanction of interest for belated payment of Provident Fund was rejected and hence, the petitioner therein preferred a writ petition. The opposition of the respondent therein was that since the charge was dropped only on 25.05.2004, the petitioner's request for payment of interest for the belated retiral benefits, is not maintainable. After considering G.O.Ms.No.510, Finance Department, dated 27.06.1995 and the following decisions, viz., Vijay L. Mehrotra v. State of U.P., reported in 2000 (2) SLR 686, Gorakhpur University v. Dr.Shitla Prasad Nagendra reported in 2001 (6) SCC 591, Government of A.P., v. C.Purushotham reported in 2002 (7) SLR 760 (DB), H.Gangahanume Gowda v. Karnataka Agro Industries Corporation Ltd., reported in 2003 (II) LLJ 1119, Union of India v. M.S.Abdulla reported in 2006 (6) SCC 455, R.Lakshmikanthan v. Government of Tamil Nadu reported in 2006 (III) LLJ 523, S.K.Dua v. State of Haryana reported in 2008 (3) SCC 44 and Govt., of T.N., v. M.Deivasigamani reported in 2009 (3) MLJ 1, a learned Single Judge, at Paragraphs 11 and 12, held as follows:

"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."

(ix) In D.D. Tewari (dead) through legal representatives vs. Uttar Haryana Bulivitrans Nigam Limited and others reported in 2014 (8) SCC 894, the Hon'ble Supreme Court, at Paragraphs 5 to 7, held as follows:

"5. The said legal principle laid down by this Court still holds good in so far as awarding the interest on the delayed payments to the appellant is concerned. This aspect of the matter was adverted to in the judgment of the learned single Judge without assigning any reason for not awarding the interest as claimed by the appellant. That is why that portion of the judgment of the learned single Judge was aggrieved of by the appellant and he had filed L.P.A. before Division Bench of the High Court. The Division Bench of the High Court has passed a cryptic order which is impugned in this appeal. It has adverted to the fact that there is no order passed by the learned single Judge with regard to

the payment of interest and the appellant has not raised any plea which was rejected by him, therefore, the Division Bench did not find fault with the judgment of the learned single Judge in the appeal and the Letters Patent Appeal was dismissed. The correctness of the order is under challenge in this appeal before this Court urging various legal grounds.

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 employer-respondent 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."

(x) In Dr.M.R.Mohan, M.S. v. The Secretary to the Government of Tamil Nadu & Others reported in 2017 (2) WLR 392, a Hon'ble Division Bench of this Court, at Paragraphs 13, 14, 18 and 19 held as follows:

"13. Then the question with regard to contribution to be made for the period of five years was examined by the Office of the Accountant General. As per Rule 115(a) of the Fundamental Rules, while a Government servant is in foreign service, contribution towards the cost of his pension must be paid to consolidated fund on his behalf, while Clause (b) thereof sets out that if the foreign service is in India, contribution must be paid on account of the cost of the leave salary also and Clause (c) sets out that contributions due under Clause (a) and (b) above were required to be paid by the Government servant himself unless the foreign employer consents to pay the same. Rule 116 of the Fundamental Rules prescribes the rate of

contributions payable on account of pension and leave salary and furnishes the data in a tabulated form. The data has worked out separate percentages for Group 'A', Group 'B', Group 'C' and Group 'D' Officers. For Group 'A' Officers, for a period of four to five years, 9% has been prescribed as the rate of contribution in Rule 116 of the Fundamental Rules. Therefore, in effect, the writ petitioner/appellant before us, could have calculated, on his own, the contributions payable by him for the period of five years, for the period he was absent from the service of the State, but he has not made any such contributions on his own. The contributions were admittedly paid by him, as was noticed by the learned Single Judge, only on 22.09.1998 and that was the reason why the learned Single Judge ordered for payment of interest on delayed pension for the period beyond thereafter.

14. Though in principle, we are in agreement with the view taken by the learned Single Judge, but however, we are left wondering as to why, for the delay that was caused in forwarding the pension papers by the Office of the Dean, Government Mohan Kumaramangalam Medical College, Salem, one should not be awarded compensatory costs in the matter. While it may be true that the orders passed by the State Government contained in their G.O.Ms.No.517, Finance (Pension) Department, dated 12.06.1987 talk of payment of interest on delayed payment of Gratuity only and consequently, does not cover the event of any delayed payment of pension, but none-the-less, some amount ought to have been awarded as compensatory cost for the delay in settling the provisional pension, to begin with till July, 2000.

.....

18. Payment of pension is no act of grace or bounty on the part of anyone. That is a right earned by the Government servant, in recognition of his past services. That is the reason why payment of pension to the Government servants has come to be recognized as a event of deferred payment for the quality of services rendered by such men. Afterall, the State Government promises certain services to its citizens and secures delivery of such services to the citizens by employing Government servants. Therefore, in recognition of such services rendered to the citizens, the State undertakes to pay monthly pension to such retired Government servants, also as a measure of social security. Any delay in settling such terminal benefits has to be viewed seriously.

19. The maximum period of six months is considered as a reasonable outer limit for sanction of pension and other terminal benefits. At any rate settling the pensionary benefits beyond a period of

one year can never be appreciated and it must necessarily result in some kind of compensation. Since the State Government has taken a Policy decision to award interest on delayed settlement of Gratuity- which infact is in consonance with the provisions contained in Section 7(3-A) of Payment of Gratuity Act, 1978- but at the same time, the State Government, as a Policy has not authorized any payment of interest on delayed pension. In the absence of any Policy decision on the part of the State Government, we are not denuded to come to the rescue of a hapless and helpless retired servant of the State. We can properly mould the relief and award compensatory cost which are capable of being recovered from the identified/ identifiable persons responsible for the malady. The Government servants are accountable forboth what they do and don't do."

17. The Tamil Nadu Pension Rules, 1978, is applicable to government servants, appointed to service and posts, in connection with the affairs of the State, which are borne on pensionable establishments, whether temporary or permanent, but shall not apply to certain persons. As per Rule 3(1)(i), 'Gratuity' includes - (i) 'service gratuity' payable under sub-rule (1) of Rule 43; (ii) 'death-cum-retirement gratuity' payable under sub-rule (1) of sub-rule (3) of rule 45; and (iii) 'residuary gratuity' payable under sub-rule (2) of rule 45. Rule 3(1)(p) defines the words, 'retirement benefits', which includes pension or service gratuity and death-cum-retirement gratuity, wherever it is admissible. Pension Rules also deal with family pension, commutation value, duty allowance, etc.

18. Rule 9 of the Tamil Nadu Pension Rules, 1978, deals with right of government to withhold or withdraw pension, during the pendency of any disciplinary proceedings or judicial proceedings or if there is any pecuniary loss caused to the Government and if he is ultimately found guilty of misconduct or negligence. Rule 45 of the said Rules deals with Death-cum-Retirement Gratuity and it states that a Government, 'who has completed five years' qualifying service and has become eligible for service gratuity or pension under rule 43, shall, on his retirement be granted death-cum-retirement gratuity, as in the table provided in the said Rule. Rule 46-A enumerates instances, for which, the person can be debarred from receiving gratuity.

19. Rule 68 of the Pension Rules deals with authorisation of final pension and balance of gratuity by the Audit Office. As per sub-rule (3) of the said rule, the Audit Officer shall authorise the payment of balance of the gratuity after adjusting the amount, if any, outstanding against the retired government servant and if such balance is payable in

his circle of audit, the Audit Officer shall prepare an order for its payment. Insofar as government dues are concerned, Rule 70 of the Tamil Nadu Pension Rules deals with recovery and adjustment of government dues and it reads as follows:

"(1) It shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement.

(2) Where a retiring Government servant does not clear the Government dues and such dues as ascertainable.

(a) an equivalent cash deposit may be taken from him; or

(b) out of the gratuity payable to him an amount equal to that recoverable on account of ascertaining Government dues shall be deducted therefrom.

NOTE:- The expression "ascertainable Government dues" includes balance of house building or conveyance advance, arrears or rent and other charges pertaining to occupation of Government accommodation, over-payment of pay and allowances and arrears of income-tax deductible at source under the Income-tax Act, 1961 (43 of 1961). It also includes dues to the local bodies or to the Staff Co-operative Societies comprising of Government Servants and registered under the Tamil Nadu Co-operative Societies Act, 1961 or to the Tamil Nadu Housing Board or to the Corporation owned/controlled by the State Government."

20. Though Mr.V.C.Selvasekaran, learned counsel for the appellants further submitted that certain clarifications have been sought for, from the Government, for payment of interest, on delayed payment, in the light of the decisions, stated supra, more so, in the case of S.K.Dua's case (cited supra), interest ordered on belated payment is justifiable.

21. In view of the above, this Court finds no infirmity in the order of the writ Court, ordering 12% interest on the belated payment of pension and DCRG. Hence, the same is confirmed.

22. In the result, the Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also closed.

s/d-
Assistant Registrar(CS-III)

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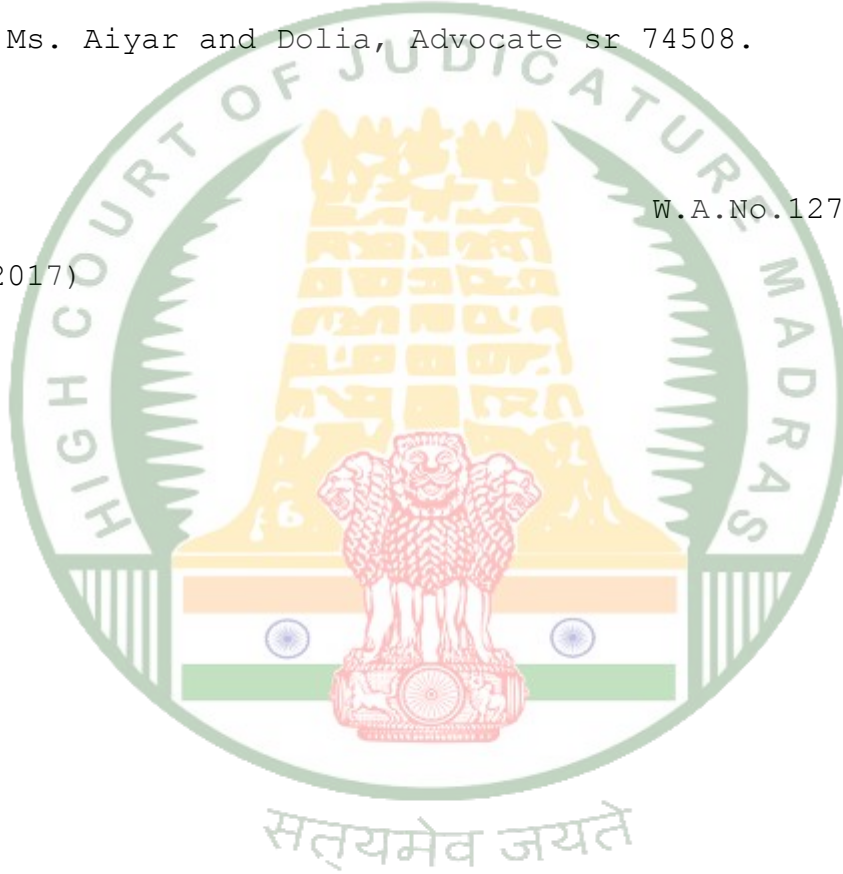
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W.A.No.1272 of 2017

SP(23/10/2017)



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