



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:16.02.2018

CORAM:

WEB COPY

THE HONOURABLE **MR.JUSTICE T.S.SIVAGNANAM**
AND
THE HONOURABLE **MRS.JUSTICE R.THARANI**

W.A.(MD) No.217 of 2018
and
C.M.P.(MD).No.1209 of 2018

1. The Director of Co-op Audit,
No.5, Kamarajar Salai,
Chennai-5.

2. The Assistant Director of Coop Audit,
13-A, Lady Doak College Road,
Chokkikulam,
Madurai-02.

... Appellants/Respondents

vs.

1. Thangaraj

... Respondent/Writ petitioner

2. The Accountant General,
261, Anna Salai,
Chennai-600 018.

... 2nd Respondent/1st Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order, dated 16.07.2015, made in W.P.(MD).No.1429 of 2012 on the file of this Court.

Prayer in WP(MD)No.1429/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent in Na.Ka.No.4125/09 AP(7) dated 05.01.2012 and consequential order in Na.Ka.No.4125/09 AP (8) dated 05.01.2012 and quash the same as illegal and unlawful and direct the Respondents to grant monthly pension and further direct them to disburse the retirement benefits alongwith 18% interest from 30.11.2009 to till the date of such payment.

For Appellant : Mr.V.R.Shanmuganathan
Special Government Pleader
For R1 : Mr.V.O.S.Kalaiselvam

**JUDGMENT**

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J]

Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellants and Mr.V.O.S.Kalaiselvam, learned counsel appearing for the first respondent/writ petitioner.

2.This appeal is directed against the order in W.P.(MD)No.1429 of 2012, dated 16.07.2015. The said writ petition was filed by the first respondent challenging the order passed by the second appellant, dated 05.01.2012 and the consequential order as being illegal and unlawful and to direct the appellants to grant monthly pension and disburse the retirement benefits along with 18% interest from 30.11.2009 to till the date of such payment.

3.It is not in dispute that the first respondent/writ petitioner attained the age of superannuation and was permitted to retire on 30.11.2009. After about three years, on 05.01.2012 action was initiated for recovery on the ground that the excess payment has been made to the petitioner as he is not entitled for increment. For recovery of the amount alleged to have been paid in excess, the petitioner DCRG amounting to Rs.2,70,415/- was not paid. Therefore, the petitioner approached this Court by filing the writ petition. The writ Court after elaborately considering the factual position by the impugned order has allowed the writ petition and in order to reconsider the view has rightly done so.

4.The Writ Court took into consideration the decision of the Hon'ble Supreme Court in the case of **State of Punjab and others etc., vas. Rafiq Masih (White Washer) etc., (Civil Appeal No.11527 of 2014)** and held that no recovery can be made from the first respondent/writ petitioner. The writ petition was allowed directing the payment of DCRG along with interest at 9% and so far as the arrears of pensionary benefits, the appellants were directed to pay the same along with interest at 6%, if paid, within a period of two months and beyond such period to pay interest at 15% as observed as earlier. There is no error in the impugned order passed by the Writ Court. The only aspect which has to be considered is whether the direction is to pay interest is justified. Admittedly, since the DCRG was withheld and not settled to the petitioner, he is entitled for the interest at the statutory rate.

5.So far as the pension is concerned, in the counter affidavit filed in support of the writ petition, the appellants have stated that the first respondent/writ petitioner is drawing the pension as admitted by the Accountant General and he has been also paid the commutation. In the light of the well confirming the order, we have make slight modification to the direction issued in paragraph 9 of the impugned order by directing that the DCRG shall be paid to the first respondent/writ petitioner in full, together with statutory interest and such payment shall be made within two weeks. Since the



petitioner has already been paid the arrears of pension and continuous to draw the pension and has also been paid the commutation pension, the order directing the payment of interest on the said amount stands vacated.

6. In the light of the above observation, the writ appeal is allowed in part. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Accountant General,
261, Anna Salai,
Chennai-600 018.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 49524
+ 1 CC TO Mr.V.O.S.KALAISELVAM, ADVOCATE IN SR No. 49257

AM

TE/SV-MMS/SAR-2 : 07/03/2018 : 3P/4C

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