

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3900 of 2019  
and C.M.P.No.24518 of 2019

- 1.The Principal Secretary to Government,  
Environment and Forest Department,  
Secretariat, Chennai-9.
- 2.The Principal Chief Conservator of Forests,  
Panagal Buildings, Saidapet,  
Chennai-15.
- 3.The Accountant General(A & E),  
Tamil Nadu, Chennai-18. .... Appellants/Respondents

-vs-

Mr.MirZiauddin ... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 26.09.2018 passed in W.P.No.18832 of 2017 on the file of this Court.

Prayer in W.P.No.18832 of 2017:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents herein to disburse the petitioners retirement benefits such as arrears of pension DCRG Encashment of leave salary and all other retirement benefits with interest of 12% per annum on the entire retirement benefits with effect from 01.05.2000 till the date of actual payment.

For Appellants

: Ms.Narmada Sampath,  
Additional Advocate General  
assisted by  
Mr.S.V.Vijay Prashanth,  
Assistant Government Pleader

## JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

Heard Ms.Narmada Sampath, learned Additional Advocate General, assisted by Mr.S.V.Vijay Prashanth, learned Assistant Government Pleader.

2.The challenge raised is to the directions issued by the learned Single Judge for award of interest, at the rate of 8% per annum, in respect of belated settlement of pensionary and other terminal benefits of the respondent/petitioner, to be calculated from the date of actual retirement.

3.It is the contention of the learned Additional Advocate General appearing for the appellants that the delay was not on the part of the State, inasmuch as a bona fide litigation was being contested in the matter relating to action taken against the respondent/petitioner, which had ultimately culminated in the grant of relief to the respondent/petitioner, whereafter, a writ appeal was preferred by the State Government that also came to be dismissed. The contention is that the delay was unintentional and unattributable to the appellants, inasmuch as the respondent/petitioner was facing charges and disciplinary proceedings, which was a bona fide action taken against the respondent/petitioner, and pending such proceedings, the withholding of the benefits, to the extent as indicated in the pleadings, was justified. It is also the contention that the amount, which was sought to be recovered from the respondent/petitioner, under the disciplinary proceedings, had been adjusted and the balance of payment had been made, as such interest thereon would not be admissible. The submission, therefore, is that in view of the provisions of the Tamil Nadu Pension Rules 1978, the absence of any such provision for grant of interest dis-entitles the respondent/petitioner from receiving any interest, which has been erroneously awarded by the learned writ Court.

4.The main plank of argument of the State is that it was the respondent/petitioner, who was at fault in not having filled up Form-V in terms of Rule 53, under Chapter-7 of the Tamil Nadu Pension Rules, 1978. The contention appears to be that it being mandatory on retiring Government servants to fill up the Form, any inaction on their part would not create a corresponding liability on the State Government to make payment of interest. The contention, therefore, is that no liability of interest can be fixed on the State on account of such inaction, which was solely attributable to the respondent/petitioner.

5.We have considered the submissions raised and we find that the litigative pursuit, which the respondent/petitioner had

to chase before this Court, was on account of the action of the State having taken against him, that ultimately rested with a final adjudication through a judicial intervention by this Court against the State. The consequence, in our opinion, is clearly to the effect that the stand of the respondent/petitioner stood vindicated not by virtue of the benevolence of the State, but by virtue of an adjudication by this Court and consequently, the State had been withholding the payments contrary to the entitlement of the respondent/petitioner. We say this, inasmuch as Rule 78 of 1978 Rules obligates payment of all retiral dues from the date on which the Government servant ceases to be borne on the establishment. This obligation, therefore, in our opinion, is on the State and on the other hand, the prescription contained in Form-V read with Rule 53, does not create any embargo or prohibit the award of interest on any such amount that has fallen due. Further, we find that the principles enshrined in the Interest Act, 1978, would also be attracted, inasmuch as the balance payable amount due to the respondent/petitioner, which was ultimately found to have been erroneously withheld, had to be released and for such time as the amount was held by the State Government, the same shall be treated to have been held in trust that would have earned interest. The employee was entitled to receive the payments, which has been now released according to the learned counsel for the appellants, but without interest.

6. One of the arguments advanced is that an incomplete submission or non-submission of an Application Form would, by itself, be sufficient to attract the principles of Article 14 of the Constitution of India, inasmuch as, the other employees would stand discriminated in the event such a principle is pressed into service.

7. We are unable to agree with the submission, inasmuch as an arbitrary action is also a necessary concomitant to Article 14 and in the instant case, we have not found any justification for the State to have withheld the amount on the pretext of an erroneous proceeding followed by a compulsive litigative pursuit, which ultimately ended in favour of the respondent/petitioner.

8. We find no justification, merely on account of the pursuit of faulty proceedings, which was pending through out, for withholding of such pension and therefore, the interest, on the principles of equity, justice and good conscience, has been rightly awarded by the learned Single Judge, which discretion, in our opinion, does not require any interference in the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

9. We make it clear that the interest would be payable only on the amount which was subjected to delay and which came to be released pursuant to the order of this Court. The

adjustments, if any, shall be calculated in the light of the observations made by the learned Single Judge and be made known to the respondent/petitioner accordingly. We further find that since we are not interfering with the order of the learned Single Judge, as observed in our judgment, it is not necessary to issue notice to the respondent/petitioner.

10.The writ appeal is, accordingly, disposed of with the said observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Secretary to Government,  
Environment and Forest Department,  
Secretariat, Chennai-9.
- 2.The Principles Chief Conservator of Forests,  
Panagal Buildings, Saidapet,  
Chennai-15.
- 3.The Accountant General(A & E),  
Tamil Nadu, Chennai-18.

+1cc to the Government Pleader Sr.95031

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