

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

C O R A M

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

WRIT PETITION NO.11937 OF 2010

&

M.P.NO.1 OF 2011

A.K.Eswarappan

...Petitioner

vs.

1. The Secretary to Government,
Municipal Administration and Water
Supply Department,
Fort St. George,
Chennai-600 009.
2. The Director of Municipal Administration
Ezhilagam 6th Floor,
Chepauk, Chennai-600 005.
3. The Director,
Local Fund Accounts Department,
Kuralagam, 4th Floor,
Chennai-600 108.
4. The Municipal Commissioner,
Municipal Office,
Mailaduthurai

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records relating to the order passed in X/K/vz;/57383/06/gp3. ehs; 29/04/2010 passed by the 2nd Respondent passed in pursuance of order passed by the 3rd Respondent in e/f/vz;/30043-e/X/r/(5)-2009. ehs; 26/03/2010 and quash the same direct the Respondents consequently to pay difference of interest on DCRG Rs.1,91,120/- from 21.10.2005 to 27.01.2006 on the belated payment of DCRG as per G.O.Ms.No.122, dated 20.02.1995 and G.O.Ms.No.173 Finance (Pension) dated 01.04.2004.

For Petitioner : Mr.A.R.Nixon

For Respondents : Mr.G.K.Muthukumar,
Spl. Govt. P. for R1 to R3
Mr.P.Srinivas for R4

O R D E R

I heard Mr.A.R.Nixon, the learned counsel for the Petitioner, Mr.G.K.Muthukumar, the learned Special Government Pleader for Respondents 1 to 3 and Mr.P.Srinivas, the learned counsel for Respondent 4.

2. At the hearing on 24.11.2020, Mr.Nixon advanced his submissions. He pointed out that the Petitioner is entitled to interest not only on the DCRG amount of Rs.1,91,120/- but also on the commuted pension of Rs.2,03,343/- which was received by the Petitioner on 03.02.2006. The said commuted pension was paid to him only in the year 2006, i.e. after about five years from the date of retirement of the Petitioner on 30.06.2001. In support of his contentions, he relied upon the judgment in the Government of Tamil Nadu v. M.Deivasigamani in W.A.No.886 of 2007 dated 17.12.2008 and the judgment of the Hon'ble Supreme Court in S.K.Dua v. State of Haryana [2008 (3) SCC 44] (S.K.Dua). On the basis of the said judgments, he contended that interest is payable on all retirement benefits whether the statutory rules provide for the same or not.

3. Mr.G.K.Muthukumar, the learned Special Government Pleader, submitted that interest was paid on the DCRG amount on 16.09.2009 because Rule 45 A of the Tamilnadu Pension Rules provides for the same. As regards the commuted pension, he contended that interest was not paid because the statutory rules do not provide for the payment of interest. Mr.Srinivas, who appeared for the fourth Respondent, submitted that interest is not payable because the commuted pension is paid in advance to the pensioner who opts for such commutation. I was informed that deductions are made to the pension of a commuted pension recipient over a 15 year period after receipt thereof. At that hearing, as regards the Petitioner, I had requested for a clarification as to whether the deduction on account of payment of commuted pension was to be made over a 15 year or 10 year period from the date of payment thereof so as to assess whether the Petitioner was compensated in some manner for the belated payment of commuted pension. At the hearing today, Mr.Muthukumar clarified that no special benefit is conferred on the Petitioner and that the deduction is to be made over a 15 year period from the date of receipt of the commuted pension. He also fairly submitted that the Hon'ble Division Bench of this Court by order dated 20.03.2013 in Union of India and Another v. A.Muralidharan and Another in W.P.No.28255 of 2012 (A.Muralidharan), concluded that interest is payable on the commuted pension at the rate of 6% p.a. if the same is paid belatedly.

4. Upon considering the submissions of the learned counsel for the respective parties and on examining the materials on record, I find that the facts are undisputed. The present writ petition is focused on the non-payment of interest on the commuted pension of Rs.2,03,343/- which was belatedly received by the Petitioner on 03.02.2006 whereas he retired on 30.06.2001. The learned Special Government Pleader also concedes that the deduction on account thereof from the pension would be made, as in all other cases, over a period of 15 years from the date of receipt of commuted pension. In the impugned order, it is stated that the Petitioner received provisional pension, without deduction, from 19.06.2002. However, provisional pension was paid because of the pending disciplinary proceedings which culminated in the exoneration of the Petitioner as regards all charges. But for the aforesaid proceedings, he would have received this amount at the time of retirement. In effect, the Petitioner has been deprived of the benefit of commuted pension for a period of 5 years after his retirement with no compensation for such delayed receipt. As held by the Hon'ble Supreme Court in S.K.Dua, such payments are not a bounty but by way of payments for services provided earlier. As such, in case of belated payment thereof, interest is payable whether the same is provided for by the statute or not. In the present case, the learned Special Government Pleader and the learned counsel for the fourth Respondent submitted that the statute and rules do not provide for interest. Nonetheless, as held by the Hon'ble Supreme Court in S.K.Dua, Division Bench of this Court in A. Muralidharan (cited supra), interest is payable even in the absence of statutory prescription. The rationale for ordering interest is that in an inflationary environment, the value of money depreciates over time and such depreciation should be compensated. In the absence of statutory prescription, however, a reasonable rate of interest should be fixed. In the facts and circumstances, the rate of 6% per annum is adopted as a reasonable rate.

5. Accordingly, the writ petition is allowed by quashing the impugned order dated 26.03.2010, which was communicated on 29.04.2010, whereby the claim of the Petitioner for interest on the commuted pension for the period of delay in payment thereof was rejected. Consequently, the Respondents are directed to pay interest to the Petitioner on the commuted pension of Rs.2,03,343/- at the rate of 6% p.a. from 30.06.2001 to 03.02.2006. Such payment shall be made within a period of three

months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Municipal Administration and Water
Supply Department,
Fort St. George,
Chennai-600 009.
2. The Director of Municipal Administration
Ezhilagam 6th Floor,
Chepauk, Chennai-600 005.
3. The Director,
Local Fund Accounts Department,
Kuralagam, 4th Floor,
Chennai-600 108.
4. The Municipal Commissioner,
Municipal Office,
Mailaduthurai

+1cc to Mr.AR.NIXON, Advocate, S.R.No.40267
+1cc to the Government Pleader, S.R.No.40089

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