



WEB COPY

W.A.(MD)Nos.358 & 360 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.07.2020

DELIVERED ON : 29.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A(MD)Nos.358 and 360 of 2020

and

C.M.P(MD)Nos.2511 and 2513 of 2020

W.A(MD)No.358 of 2020:

1.The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Commissioner of
Rural Development and Panchayat Raj,
Panagal Building, Saidapet,
Chennai - 600 015.

...Appellants/Respondents 1 & 2
Vs.

1.R.Krishnasamy ...1st Respondent/Writ Petitioner

2.The Principal Accountant General (A&E),
Tamil Nadu, Teynampet,
Chennai - 600 018.

... 2nd Respondent/3rd Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent Appeal against the order passed by this Court in W.P(MD)No.15634 of 2013, dated 03.12.2019.

Prayer in WP(MD). 15634/ 2013 :

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 relating to the G.O. (D) No. 165 RD & PR (E1) Department dated 16.4.2013 and quash the para No. 5 of the said G.O. in so far as it relates to the notional fixation of pay of the petitioner is concerned and consequently direct the respondents to sanction the pay and other allowances with attendant monetary benefits with effect from 12.10.1998 on par with his junior and also to refix the pensionary benefits of the petitioners with effect from 1.4.2008 with 18 % composite interest.

For Appellants : Mr.V.R.Shanmuganathan
Special Government Pleader

For Respondents: Mr.Veera Kathiravan, Senior Counsel
for M/s.Veera Associates for R.1
Mr.P.Gunasekaran for R.2



W.A(MD)No.360 of 2020:

- 1.The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of
Rural Development and Panchayat Raj,
Panagal Building, Saidapet,
Chennai - 600 015.
- 3.The District Treasury Officer,
Virudhunagar,
Virudhunagar District - 636 705.
- 4.The Sub Treasury Officer,
Sivakasi, Virudhunagar District. ... Appellants/Respondents

Vs.

R.Krishnasamy

... Respondent/Writ Petitioner

Prayer : Appeal filed under Clause 15 of the Letters Patent Appeal against the order passed by this Court in W.P(MD)No.17953 of 2013, dated 03.12.2019.

Prayer in WP(MD). 17953/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents herein to sanction 18% composite interest claimed by the petitioner for the belated payment of retirement benefits such as CPF Final closure, surrender of earned leave and leave on private affairs, special PF, payment of provisional pension, pension arrear, commutation and DCRC from 01.04.2008 to till the date of actual payment within the stipulated time as this Honourable Court pleased to fix.

For Appellants

: Mr.V.R.Shanmuganathan

Special Government Pleader

For Respondent

: Mr.Veera Kathiravan

Senior Counsel for M/s.Veera Associates

COMMON JUDGMENT

M. SATHYANARAYANAN, J.

The official respondents in W.P(MD)Nos.15634 and 17953 of 2013, are the respective appellants and aggrieved by the separate orders, dated 03.12.2019 passed in W.P(MD)Nos.15634 and 17953 of 2013, had filed these writ appeals.

<https://hcservices.ecourts.gov.in/hcservices/>



2. Facts leading to the filing of these appeals have been narrated in detail in the impugned orders which are the subject matter of challenge in these writ appeals and therefore, it is unnecessary to restate the entire facts except culling out necessary and relevant facts for the purpose of disposal of these appeals.

W.A(MD)No.358 of 2020 against W.P(MD)No.15634 of 2013:

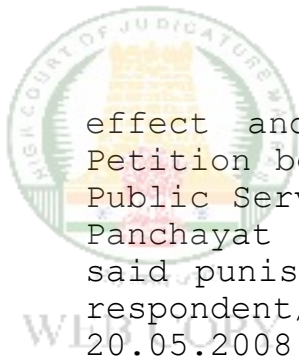
3. The first respondent/writ petitioner initially joined the service as Junior Assistant in the Tamil Nadu Secretariat Service in the year 1974 and got his promotion as an Assistant in the year 1975 and the first respondent/writ petitioner was posted as Assistant Section Officer in the Tamil Nadu Secretariat Service after undergoing a training and by way of transfer of service, became Deputy Block Development Officer in the year 1987 and got his promotion as Block Development Officer in the year 1988. In the year 1995, he got his promotion as Divisional Development Officer and further promotion as Joint Director in the year 2002.

4. The first respondent/writ petitioner while working as Personal Assistant (Development) to the District Collector of Perambalur District, was visited with a disciplinary proceedings in the form of a Charge Memo, dated 08.05.1997 and on account of the same, his name was overlooked in the panel, dated 23.09.1998 for the year 1998-1999 for promotion to the post of Joint Director.

5. The first respondent/writ petitioner, aggrieved by the same, filed O.A.Nos.8792 of 1998 and 259 of 2000 before the Tamil Nadu Administrative Tribunal and vide order dated 24.01.2000, the Tamil Nadu Administrative Tribunal directed the concerned authorities to include his name in the year 1999-2000 without reference to the charges framed and give promotion subject to the outcome of the Original Applications and departmental proceedings.

6. According to the first respondent/writ petitioner, the first appellant/first respondent had delayed the implementation of the said order and issued G.O.1(D) No.594, Rural Development, dated 27.11.2001, to include his name in the year 1999-2000 and also issued an yet another Government Order in G.O.(D)No.107, Rural Development, promoting him as Joint Director and posted him as Project Officer, District Rural Development Agency (DRDA), Cuddalore. The first respondent/writ petitioner joined the promoted post on 08.03.2002 and though the order of the Tribunal in O.A.No.259 of 2000 was dated 24.01.2000, nearly after two years only, the first appellant/first respondent had implemented the said order.

7. The first appellant/first respondent vide G.O.(D)No.74, Rural Development, dated 09.02.2002, had imposed upon him, the punishment of stoppage of increment for one year without cumulative



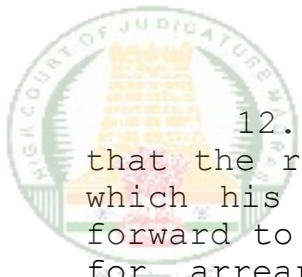
effect and the first respondent/writ petitioner filed a Review Petition before the Government, who after consulting the Tamil Nadu Public Service Commission, vide G.O.(D)No.179, Rural Development and Panchayat Raj (E2) Department, dated 25.03.2008, had set aside the said punishment and dropped further action. Immediately, the first respondent/writ petitioner submitted his representation, dated 20.05.2008 praying for inclusion of his name for the year 1998-1999 for the post of Joint Director by giving him retrospective promotion and consequential monetary benefits.

8. The first respondent/writ petitioner, aggrieved by the non-consideration of the said representation, filed W.P(MD)No.5528 of 2010 before this Court and vide final orders dated 22.04.2010, this Court directed the concerned official respondents to consider and pass orders on his representation dated 20.05.2008 in the light of G.O.(D) No.179, RD & PR, dated 25.03.2008.

9. The Original Application in O.A.No.8792 of 1998 which was filed by the first respondent/writ petitioner before the Tamil Nadu Administrative Tribunal, on abolition, was transferred to the file of the Principal Seat of this Court and re-numbered as W.P.No.38141 of 2006 and while disposing of the said writ petition on 02.02.2010, this Court had taken into consideration the recommendation made by the District Collector, for inclusion of his name in the panel and granted him liberty to make further representation along with the copy of the order passed in the said writ petition as well as the recommendation of the District Collector, with a further direction by directing the Government to consider and pass orders in the light of the recommendation of the District Collector and by fixing a outer time limit.

10. The appellants 1 and 2/respondents 1 and 2 called for further representation from the first respondent/writ petitioner and accordingly, he submitted the same on 28.04.2010 praying for inclusion of his name in between Sl.No.10 and Sl.No.11 in the panel list issued in G.O.(4D)No.19, Rural Development, dated 23.09.1998 with consequential monetary benefits.

11. The first respondent/writ petitioner alleging wilful disobedience and non-compliance of the order, dated 22.04.2010, passed in W.P(MD)No.5528 of 2010, filed Contempt Petition (MD)No.442 of 2013 and thereafter, the first appellant/first respondent issued an order in G.O.(D)No.165, RD & PR, dated 16.04.2013 including his name in the list of Joint Director for the year 1998-1999 in Sl.No.10(A) between Sl.No.10 and Sl.No.11 and also directed the second appellant/second respondent to fix his pay notionally with effect from 12.10.1998 - the date on which his immediate junior has been promoted and consequential monetary benefits with effect from the date of his joining the cadre of Joint Director.



12. It is the case of the first respondent/writ petitioner that the re-fixation of pay should have been done from the date on which his immediate junior has been promoted and therefore, came forward to file the writ petition in W.P(MD)No.15634 of 2013 praying for arrears of pay and attendant monetary benefits with 18% composite interest from 12.10.1998 and re-fixation of his pensionary benefits with effect from 01.04.2008 also with 18% interest as contemplated in G.O.No.173, Finance (Pension) Department, dated 01.04.2004.

13. The writ petition was entertained and notices were ordered. The appellants 1 and 2/respondents 1 and 2 had filed the common counter affidavit and they took a stand that the first respondent/writ petitioner is not eligible to get arrears of pay and allowance from 12.10.1998 to 07.03.2002 since he had not actually acted/worked in the post of Joint Director of Rural Development and during the said period, he had functioned in the cadre of Assistant Director of Rural Development, for which, he got salary.

14. The learned Judge, after taking note of all the materials and considering the arguments advanced by the respective learned Counsel for the parties, had also taken into consideration the decision rendered by the Honourable Supreme Court in **Union of India v. K.V.Janakiraman** reported in **AIR 1991 SC 2010** and held that the recommendations of the District Collector of Virudhunagar District have not been properly taken into consideration and the order of the Tamil Nadu Administrative Tribunal has been belatedly complied with and the delay was caused only by the official respondents and further held that if the order of the Tribunal, dated 24.01.2000 passed in O.A.No.259 of 2000 would have been complied with within time, the first respondent/writ petitioner could have got promotion earlier and they have not done so due to the lapses on their part and also further taking into consideration the peculiar facts and circumstances of the case, has set aside the impugned order with a further direction, directing the official respondents therein to notionally fix the pay scale of the first respondent/writ petitioner as Joint Director from 12.10.1998, the date on which, his immediate junior has been promoted and pay the difference amount of pay and other allowance till the date of his retirement, with a further direction as to the re-fixation of pensionary benefits with effect from 01.04.2008, the date on which, he retired from service and the arrears amount, if any, with interest at the rate of 18% p.a., in terms of the decision in **P.V.Mahadevan v. The Secretary to Government, Housing and Urban Development Department, Chennai and another** reported in **2011 (2) CWC 401** and an outer time limit of eight weeks from the date of receipt of a copy of the order was also fixed to comply with the said order.

15. The official respondents, aggrieved by the allowing of the writ petition with consequential directions, had filed the writ



appeal in W.A(MD)No.358 of 2020.

16. Mr.VR.Shanmuganthan, learned Special Government Pleader appearing for the appellants/official respondents has drawn the attention of this Court to the copy of the letter of the District Collector, Dharmapuri District, vide Na.Ka.No.2412/2015/K1, dated 14.07.2020, addressed to the Government Pleader, Madurai Bench of Madras High Court, Madurai, as well as the dates and events and would submit that the delay is very very minimal and further pointed out that the interest at the rate of 18% p.a., for DCRG payment is also unsustainable in the light of the substitution in the form of amendment to Sub Rule (1) to Rule 45-A of the Tamil Nadu Pension Rules, 1978, in terms of G.O.No.487, Finance (Pension) Department, dated 07.10.2009, to the effect that on and from 01.04.2004, the rate of interest shall be at the rate of interest payable on General Provident Fund during the retirement of a Government Servant (compounded annually) and hence, the delay is very minimal and as such, the payment of interest at the rate of 18% p.a., is very much on the higher side.

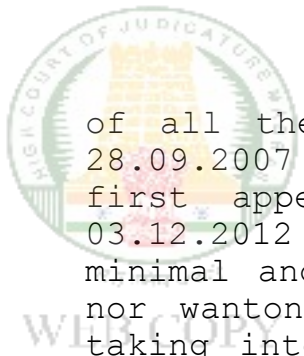
17. The learned Special Government Pleader appearing for the appellants/official respondents has also drawn the attention of this Court to the first proviso to FR 27 and would submit that in the light of the said proviso, the first respondent/writ petitioner is entitled to actual financial benefits only from the date of actual joining to the post of Joint Director (Rural Development) and the period, during which, the first respondent/writ petitioner made a claim, he was admittedly working as Assistant Director and not acted in the promoted post and therefore, he was not entitled to such a benefit and further, the said legal and factual aspect has been completely overlooked in the impugned order and prays for interference.

W.A(MD)No.360 of 2020 against W.P(MD)No.17953 of 2013:

18. The respondent/writ petitioner claimed 18% composite interest for the belated payment of retirement benefits, such as, GPF Final Closure, Surrender of Earned Leave and Leave on Private Affairs, Special Provident Fund, payment of Provisional Pension, Pension Arrears, Commutation and DCRG from 01.04.2008 till the date of actual payment.

19. Facts narrated in W.A(MD)No.358 of 2020, also pertain to this case also.

20. On behalf of the appellants 1 and 2/official respondents 1 and 2 in the writ petition, a counter affidavit has been filed narrating the earlier litigations and they took a stand that till orders are passed by the Honourable Supreme Court in S.L.P(Civil) Nos.36552 and 36553 of 2010, dated 23.01.2012 and so also, dropping



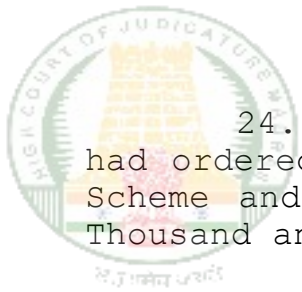
of all the three charge memos, dated 14.03.2008, 18.03.2008 and 28.09.2007 against the respondent/writ petitioner vide orders of the first appellant/first respondent on 12.07.2012, 12.07.2012 and 03.12.2012 respectively, the delay in settling the benefits are very minimal and in any event, the same cannot be termed either wilful nor wanton, but the same is excusable. The learned Judge, after taking into consideration the rival submissions and the materials placed on record and also the decision in **Union of India v. K.V.Janakiraman** reported in **AIR 1991 SC 2010**, had found that but for the charge memo, the respondent/writ petitioner would have got normal promotion and further that, the order of the Tamil Nadu Administrative Tribunal, dated 24.01.2000 in O.A.No.259 of 2000 has not been complied with on time and in that event, the respondent/writ petitioner would have got his promotion earlier and therefore, ordered the writ petition as prayed for, by directing the appellants/official respondents to pay the interest at the rate of 12% p.a., for the belated payment of DCRG as per the Tamil Nadu Pension Rules and in respect of the belated payment of other retirement benefits, to pay the interest at the rate of 18% p.a., from the next day of his retirement, i.e., from 01.04.2008 to till the date of actual payment within a period of twelve weeks from the date of receipt of a copy of the order, vide impugned order dated 03.12.2019. The official respondents, aggrieved by the said order, had filed the writ appeal in W.A(MD)No.360 of 2020.

21. This Court paid it's best attention to the rival submissions and also perused the materials placed on record.

W.A(MD)No.358 of 2020:

22. It is not in dispute that the first respondent/writ petitioner has been visited with three disciplinary proceedings in the form of charge memos, dated 08.05.1997, 14.03.2008 and 18.03.2008 respectively and on account of the pendency of the first charge memo, dated 08.05.1997, his name was overlooked in the list of Divisional Development Officers for the promotion to the post of Joint Director for the year 1998-1999. In the disciplinary proceedings in respect of the first charge memo, the first respondent/writ petitioner was imposed with the punishment of stoppage of increment for one year without cumulative effect and his review petition before the Government came to be allowed vide G.O. (D)No.179, Rural Development and Panchayat Raj, dated 25.03.2008.

23. The first appellant/first respondent, vide G.O(D)No.196, RD & PR (E2) Department, dated 31.03.2008, had permitted the first respondent/writ petitioner to retire from service as Project Officer on attaining the age of superannuation on 31.03.2008 A.N., without prejudice to the charge memos, dated 28.09.2007 and 14.03.2008 respectively.



24. The second appellant, vide proceedings dated 10.07.2008, had ordered the disbursement of Special Provident Fund cum Gratuity Scheme and ordered the payment of Rs.25,001/- (Rupees Twenty Five Thousand and One only).

25. The third charge memo was put to challenge by the first respondent/writ petitioner by filing W.P(MD)No.5108 of 2008 and it came to be allowed and challenge made by the official respondents therein including the first appellant/first respondent by filing W.A (MD)Nos.609 and 610 of 2010 also came to be dismissed by a common judgment, dated 29.09.2010. S.L.P(Civil)Nos.36552-36553 of 2010 preferred by the official respondents challenging the said judgment, had also ended in dismissal, vide common order of the Honourable Supreme Court, dated 23.01.2012.

26. The first appellant/first respondent, vide G.O.(D)No.375, RD & PR (E2) Department, dated 12.07.2012 and G.O.(D)No.376, RD & PR (E2) Department, dated 12.07.2012, respectively, had dropped the proceedings in the third and second charge memos also and vide G.O. (D)No.615, RD & PR (E1) Department, dated 03.12.2012, had dropped further proceedings in first charge memo also.

27. The first appellant/first respondent, as a consequence of dropping of further action, had passed an order vide G.O.(D)No.165, Rural Development and Panchayat (E1) Department, dated 16.04.2013, included the name of the first respondent/writ petitioner in the temporary promotion list of Joint Director (Rural Development) for the year 1998-1999 and fix his name between immediate senior and junior with effect from 12.10.1998 with a further direction to pay the consequential monetary benefits from and the actual date of joining the post of Joint Director (Rural Development).

28. The primordial submission made by the learned Special Government Pleader appearing for the appellants/official respondents is that since the first respondent/writ petitioner did not actually work as Joint Director between 12.10.1998 and 07.03.2002 and acted only as Assistant Director, for which also, he received salary by applying the principle of "No Work, No Pay", he was paid with the monetary benefits from the date of joining the post of Joint Director on 08.03.2002.

29. In the considered opinion of this Court, such an argument advanced by the learned Special Government Pleader appearing for the appellants/official respondents, based on the counter affidavit filed on behalf of the appellants/official respondents 1 and 2, is untenable.

30. It is relevant to extract Sub-Rule 17 and first proviso to FR 27, hereunder:

"17. In case where a Government servant has



been overlooked for promotion/appointment to the next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior provided he has drawn the same rate of pay as his junior in the lower post from time to time. If he has not drawn the same rate of pay as his junior in the lower post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had he been promoted/appointed to the higher post along with his junior. In cases where seniority has been restored on or after 19th September 1981, arrears of pay and allowance consequent of fixation of pay shall be admissible with effect from the date of assumption of charge in the higher post; in cases where seniority has been restored prior to 19th September 1981, arrears shall be admissible only with effect from the above date. [G.O. Ms. No. 977, Personnel and Administrative Reforms (FR.III), dated 6th October, 1986.]

Provided that in case of Government servants whose names were deferred for inclusion in the panel for promotion to higher post due to pendency of charges, but subsequently included in the same panel on exoneration of the charges after the date of their retirement on superannuation on appeal or review, their pay shall be fixed notionally on the date of their retirement on superannuation at the stage at which they would have drawn, had they been promoted or appointed to the higher post along with their junior for the purpose of pension and other monetary terminal benefit;"

31. Though at the first blush, the arguments of the learned Special Government Pleader appearing for the appellants/official respondents 1 and 2, appears to be attractive, it may not hold good, in the light of FR 54 and FR 54-A. Rulings No.1 as to the said FRs., would read, "The case of a Government servant reduced to a lower grade or post as a measure of punishment and subsequently restored to his former post should be dealt with in accordance with the provisions of Rules 54 and 54-A".

32. It is relevant to extract hereunder FR 54 and FR 54-A:

FR 54:

"54. (1) When a Government servant, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal or review or would



have been so reinstated (but for his retirement on superannuation while under suspension or not), the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole), of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2) the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject to the provisions of sub-rules (6) and (7), be paid such



amount (not being the whole) of the pay and allowance to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period, which, in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice:

Provided that any payment under this sub-rule to a Government servant shall be restricted to a period of three years immediately preceding the date on which orders for reinstatement of such Government servant are passed by the appellate authority or reviewing authority or immediately preceding the date of retirement on superannuation of such Government servant, as the case may be.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as period spent on duty, unless the competent authority specifically directs that it shall be treated for any specified purpose : Provided that if the Government servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

Explanation.—The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of— (a) extraordinary leave in excess of six months in the case of non-permanent Government servant; and (b) leave of any kind in excess of five years in the case of a permanent Government servant or an approved probationer.

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible. (7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 53.



(8) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant."

FR 54-A:

"54-A. (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

(2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub rule (7) of rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled to had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection, within such period which, in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice:

Provided that any payment under this sub-rule to a Government servant shall be restricted to a period of three years immediately preceding the date on which the judgment of the court was passed, or the date of retirement on superannuation of such Government servant, as the case may be.

(ii) The period intervening between the date of dismissal, removal or compulsory retirement



including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government Servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant."

33. The first respondent/writ petitioner on account of the first charge memo, dated 08.05.1997 was overlooked and his name was not included in the panel/temporary list for the post of Joint Director (Rural Development) for the year 1998-1999. The first respondent/writ petitioner made a challenge to the said order by filing O.A.No.259 of 2000 and vide interim order dated 24.01.2000, the Tribunal directed the authorities/appellants to include the name of the first respondent/writ petitioner for the panel for the year 1999-2000 without reference to the charges framed and give promotion and also made it clear that the said promotion is subject to the result of the O.A.No.259 of 2000 and the charges.

34. The punishment of postponement of increment was also reviewed by the first appellant/first respondent and it also allowed the same vide G.O.(D)No.179, Rural Development and Panchayat Raj Department, dated 25.03.2008.



35. It is the forceful and vehement submission of the learned Senior Counsel appearing for the first respondent/writ petitioner that in the light of the interpretation of first proviso to Sub-Rule 17 to FR 57 and Rulings No.1 of FR 54 and FR 54-A, but for the charge memo, he would have got his promotion along with his junior and therefore, the delay cannot be attributed to the first respondent/writ petitioner and as such, he is eligible to get all the consequential benefits as if he was promoted with effect from 12.10.1998 and however, the first appellant/first respondent had erroneously concluded that since he did not work as Joint Director from 12.10.1998 to 07.03.2002, he is not entitled to get the actual monetary benefits.

36. In **Union of India v. K.V.Jankiraman** reported in **AIR 1991 SUPREME COURT 2010**, the entitlement of an employee as to the benefits including salary of promotional post on account of exoneration, came up for consideration and it is relevant to extract the following sub-paragraphs in paragraph 7 as under:

"... There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F.R. 17(1) of the Fundamental Rules and Supplementary Rules which read as follows:

"F.R.17(1). Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done



and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not 'found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. ..."

The said decision is a complete answer to the arguments advanced by the learned Special Government Pleader appearing for the appellants/official respondents.

37. Now, coming to the payment of interest for the alleged delay in making the actual payment, a Single Bench of this Court in **P.V.Mahadevan v. The Secretary to Government, Housing and Urban Development Department, Fort St. George, Chennai - 600 009 and another** reported in **2011 (2) CWC 401**, had considered the scope of Rule 45-A of the Tamil Nadu Pension Rules, 1978 and the applicability of Article 14 of the Constitution of India and taking into consideration various pronouncements of the Honourable Supreme Court as well as this Court, especially, the decision in **Devendra Pratap Narain Rai Sharma v. State of U.P.**, reported in **AIR 1962 SC 1334**, in paragraph 11, observed as follows:

"11. Therefore, the principles laid down by the Division Bench of this Court and the Hon'ble

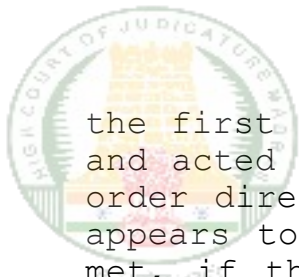


Charge Memo issued against a delinquent officer is quashed or once the dismissal order passed against the public servant was declared invalid in a Civil proceedings, the delinquent officer is deemed to have been in service continuously not facing any delinquency. The said principle is squarely applicable to the facts of the instant case as in this case also the Hon'ble Apex Court has quashed the Charge Memo issued against the Petitioner and as such, he is deemed to have been in service without any Departmental proceedings on the date of his retirement, i.e., on 28.02.2002. In view of the above said reasons, this Court has no hesitation to hold that the Petitioner cannot be deprived or denied his right to claim interest for the delayed payment of retiral benefits on the ground of pendency of Disciplinary proceedings pending against him earlier."

and it is in tune with the judgment of the Honourable Supreme Court in **Union of India v. K.V.Janakiraman** reported in **AIR 1991 SC 2010** and the said decision relating to interest for the delayed retiral benefits was also considered and the learned Single Bench of this Court also taking note of the decisions in **S.K.Dua v. State of Haryana** reported in **2008 (3) Supreme Court Cases 44** and **Government of Tamil Nadu v. M.Deivasigamani** reported in **2009 (3) MLJ 1**, has awarded 18% p.a., for the delayed retiral benefits to the petitioner therein.

38. As already pointed out, admittedly, the immediate junior of the first respondent/writ petitioner, namely, P.Murugesan (Sl.No.11) was promoted as Joint Director (Rural Development) with effect from 12.10.1998 and but for the charge memo, the name of the first respondent/writ petitioner would have been included and got promotion. The first appellant/first respondent, despite a positive order of interim direction passed by the Tamil Nadu Administrative Tribunal, vide order dated 24.01.2000 in O.A.No.259 of 2000, did not comply with the same and belatedly complied with and took a defence that during the said period, the first respondent/writ petitioner did not work in the cadre of Joint Director, but worked only in the cadre of Assistant Director. The said stand is untenable for the reason that only on account of the pendency of the disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, he was overlooked and as such, he is entitled for monetary benefits in the cadre of Joint Director from 12.10.1998 to 07.03.2002 less the salary paid to him for the post of Assistant Director (Rural Development).

39. Now, coming to the interest at the rate of 18% p.a., is concerned, this Court is of the considered view that the first appellant/first respondent had reviewed the punishment in respect of



the first charge memo and also dropped two other charge proceedings and acted fairly though somewhat belatedly. Therefore, the impugned order directing the payment with interest at the rate of 18% p.a., appears to be on the higher side and the ends of justice would be met, if the award of simple interest at the rate of 12% p.a., is ordered.

W.A(MD)No.360 of 2020:

40. In the light of the amendment to second proviso to Sub-Rule (1) of Rule 45-A of the Tamil Nadu Pension Rules, 1978, vide G.O.No.487, Finance (Pension) Department, dated 07.10.2009, insofar as DCRG is concerned, the payment of interest at the rate of 12% p.a., awarded in the impugned judgment requires modification and the interest is to be calculated at the rate of interest payable on General Provident Fund during the retirement of the Government servant (compounded annually) on and from 01.04.2004.

41. Hence, as regards the other retiral benefits, the tabular column in the letter of the District Collector, Dharmapuri District, vide Na.Ka.No.2412/2015/K1, dated 14.07.2020, addressed to the Government Pleader, Madurai Bench of Madras High Court, Madurai, would disclose the following facts:

Head	Date of Settlement
DCRG	25.02.2013
Arrears of DCRG	13.02.2014
GPF	16.07.2008
Arrears of GPF	04.08.2011
Special Provident Fund	28.07.2008
EL & UEL on Private Affairs	07.01.2009
Pension	10.01.2013
Commutation	10.01.2013
Provisional Pension	23.04.2008/11.05.2008

42. As regards the General Provident Fund, even according to the respondent/writ petitioner, the delay was 3 months and 15 days and it appears to be an excusable delay for which, he is not entitled to any interest and now, coming to the arrears of General Provident Fund, there is a delay of 3 years and 3 days, for which, he is entitled to interest at the rate of 12% p.a.

43. According to the respondent/writ petitioner, Special Provident Fund was disbursed belatedly on 28.07.2008, i.e., with a delay of 3 months and 27 days and the said delay, in the facts and circumstances of the case, has been explained and excusable and therefore, the respondent/writ petitioner is not entitled to any interest in respect of the Special Provident Fund.



44. Insofar as encashment of EL and UEL on Private Affairs is concerned, according to the respondent/writ petitioner, there was a delay of 9 months and 6 days and the said delay is also excusable.

45. In respect of Commutation, the delay has been properly explained and therefore, the respondent/writ petitioner is not entitled to any interest and so also, in respect of Provisional Pension, there was no delay.

46. In the result,

(i) W.A(MD)No.358 of 2020 is partly allowed and the impugned order insofar as awarding interest at the rate of 18% p.a., is modified to 12% p.a., and in other respects, the appeal is dismissed;

(ii) W.A(MD)No.360 of 2020 is partly allowed and the rate of interest payable to the retiral benefits of the respondent/writ petitioner is modified as under:

Head	Interest
DCRG	On par with interest payable to GPF
Arrears of DCRG	On par with interest payable to GPF
GPF	Not Eligible *
Arrears of GPF	12% p.a.,
Special Provident Fund	Not Eligible *
Encashment of EL & UEL on Private Affairs	Not Eligible
Pension	Vide judgment in W.A(MD) No.358 of 2020
Commutation	Not Eligible *
Provisional Pension	Not Eligible *

* In the facts and circumstances of the case.

(iii) Consequently, the connected civil miscellaneous petitions are closed. No costs.

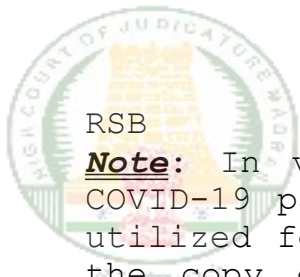
Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



RSB

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Fort St. George,
Chennai - 600 009.
 - 2.The Commissioner of
Rural Development and Panchayat Raj,
Panagal Building,
Saidapet, Chennai - 600 015.
 - 3.The Principal Accountant General (A&E),
Tamil Nadu, Teynampet,
Chennai - 600 018.
 - 4.The District Treasury Officer,
Virudhunagar,
Virudhunagar District - 636 705.
 - 5.The Sub Treasury Officer,
Sivakasi, Virudhunagar District.
- +2 CC's to M/s.VEERA ASSOCIATES, Advocate (SR-13364 and 13365)

COMMON JUDGMENT MADE IN
W.A(MD)Nos.358 and 360 of 2020
and
C.M.P (MD)Nos.2511 and 2513 of 2020
29.07.2020

sma/07/08/2020/19p/8c