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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.07.2021
CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE S.ANANTHI
W.A.[MD]No.1326 of 2021

S.Ravindran : Appellant/Petitioner

Vs.

1.The Principal Secretary to Government,
Highways and Minor Ports (HL1) Department,
Secretariat,
Chennai-600 009.

2.The Superintending Engineer,
National Highways,
Highways Department,
Perumalpuram-627 007,
Tirunelveli District. : Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order passed in W.P(MD)No.6881 of 2021, dated 26.03.2021 on the file of this Hon'ble Court and allow this Writ Appeal.

Prayer in WP(MD). 6881/ 2021 :

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 second respondent i.e., the superintending Engineer, national Highways, Tirunelveli in Kuripanai no.1109/2015/A1/dated 09.03.2021 and quash the same and consequently direct the first respondent i.e., the Principal Secreatary to Government, Highways and Minor Ports (HL1) Department, chennai to sanction 18 percent interest for belated payment of encashment of leave salary for the period from 01.11.2014 to 14.09.2020 and pass such further or other order as this Honble court may deem fit and proper in the circumstances of the case and thus render justice

For Appellants : Mr.S.Visvalingam
For Respondents : Mr.A.K.Manickam
Standing Counsel for Government

JUDGMENT

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

We have heard Mr.S.Visvalingam, learned counsel appearing for the appellant and Mr.A.K.Manickam, learned Standing Counsel for Government appearing for the respondents.

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2.This Writ Appeal by the writ petitioner is directed against the order dated 26.03.2021, in W.P(MD)No.6881 of 2021.

3.The writ petition was filed by the appellant challenging the proceedings of the second respondent dated 09.03.2021, whereunder, the appellant's claim of interest at 18% p.a. on the belated payment of encashment of leave salary for the period from 01.11.2014 to 14.09.2020 was rejected. The learned Writ Court dismissed the writ petition holding that after conclusion of the disciplinary proceedings, the retirement benefits were paid to the appellant and because in the impugned order passed by the second respondent it is stated that there is no provision of law for payment of interest on belated payment of encashment of leave salary, the Court cannot issue any direction.

4.The entitlement of the appellant which was claimed by him forms part of the retirement benefits and the question would be whether interest is payable on account of the delay in settlement of the retirement benefits. The respondents would state that the delay had occasioned on account of the disciplinary proceedings which were initiated against the appellant and therefore, the delay cannot be attributed by the department. To be noted, the charges framed against the appellant has been dropped. In such circumstances, whether the interest is payable or not is the question involved in this writ appeal.

5.Identical issue was considered by the Division Bench of this Court in the case of ***G.Kalyanam** Vs. **The Principal Secretary to Government, Co-operation, Food and Consumer Protection Department, and two others in W.A.[MD]No.118 of 2017***. In the said case, what was withheld was the Death cum Retirement Gratuity and the question was whether the appellant was entitled to interest on the Death cum Retirement Gratuity. The Court held that the interest is payable and the operative portion of the order reads as follows:

> *"6.The question would be as to whether the appellant would be entitled for interest on the Death cum Retirement Gratuity (DCRG). Rule 45(A) as it stood amended by after insertion of sub Rule (i) (a), with effect from 10.05.1991 vide G.O.Ms.No.510, Finance (Pension), dated 27.06.1995, provides for payment for interest on Death cum Retirement Gratuity, which is withheld on account of the disciplinary proceedings pending against the retired Government servant. The said Rule reads as follows :*
>
> > *45A-(1-A). The period beyond which such interest is payable shall be as follows.-*
> > *(i)in the case of a Government servant retired otherwise on superannuation and where the Death-cum-Retirement Gratuity is withheld on account on the disciplinary proceeding*

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pending against him.-

(a) three months from the date of retirement where the Government servant is exonerated of all charges and where the Deathcum-Retirement Gratuity is paid on the conclusion of disciplinary proceedings:

(b) ......

(c) ......

7.In terms of Clause (a) of the Section 45-A (1-A) (i), the Government servant is entitled for interest after three months from the date of retirement, where he is exonerated from all the charges and Death-cum-Retirement Gratuity is paid on the conclusion of the disciplinary proceedings.

8.The learned Special Government Pleader would submit that the disciplinary proceedings stood dropped only on 18.10.2013 and at best three months thereafter, the appellant would be entitled for interest till the DCRG was settled on 10.02.2015.

9.We are unable to accept the said contention as the Rule does not provide for such a contingency, but only states that the Government servant is entitled for interest after three months from the date of retirement, where he is exonerated of all the charges and the Death-cum-Retirement Gratuity is paid on the conclusion of the disciplinary proceedings. Admittedly, the appellant has been permitted to retire with effect from 31.01.2007 as he has been fully exonerated / dropped all charges framed against him. Thereafter, from April 2007, the appellant is entitled for interest in terms of above provision.

10.It is brought to our notice that the Government, vide G.O.D).No.136, Cooperation, Good and Consumer Protection (CH1) Department, dated 07.05.2015 considered some what a similar case of one Tr.K.S.Rajamanickam, Deputy Registrar of Cooperative Societies, against whom, the charge proceedings were initiated and he was not permitted to retire and ultimately, he was exonerated of the charges and allowed to retire and the Government had directed payment of interest. The stand taken by the Government in the said G.O., is squarely applicable to the appellant. Therefore, we are inclined to grant the relief sought for by the appellant in the writ petition.

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11.For all the above reasons, this writ appeal is allowed and the impugned order is set aside. Consequently, the writ petition is allowed and the respondents are directed to pay interest at the admissible rate on the expiry of three months from the date of appellant's retirement ie., 31.01.2007. The above direction be complied with by the respondents within a period of three months from the date of receipt of copy of this order. No costs."

6.It is beneficial to take note of the decision of the Hon'ble Supreme Court in the case of ***S.K.Dua*** *Vs.* ***State of Haryana and another in Civil Appeal No.184 of 2008 dated 09.01.2008,*** wherein, it has been held as follows:

"In the circumstances, prima facie, 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 in 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 absence 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."

7.In the light of the above, since the benefit claimed by the appellant part takes the character of the retirement benefits, the above rule can be made applicable and the interest has to be paid. Though the appellant claims 18% interest, the same cannot be allowed and interest at the rate of 6% is considered.

8.Accordingly, the Writ Appeal is allowed and the order passed by the second respondent dated 09.03.2021 is set aside and the respondents are directed to settle the said amount together with interest at the rate of 6% p.a. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)

MR

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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.*

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To
1.The Principal Secretary to Government,
Highways and Minor Ports (HL1) Department,
Secretariat,
Chennai-600 009.

2.The Superintending Engineer,
National Highways,
Highways Department,
Perumalpuram-627 007,
Tirunelveli District.

+1 CC to M/s.SPL GP (SR-21739[F] dated 08/07/2021)

+1 CC to M/s.S.VISVALINGAM, Advocate (SR-21796[F] dated 09/07/2021)

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07.07.2021

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