IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14076 OF 2022

Suresh L. Tekwani ...Petitioner

Union of India through Secretary, Ministry of Finance, Department of Revenue and Ors. ...Respondents

...

Mr. Rajeev N. Kumar for the Petitioner.
Mr. Ashok D. Shetty with Mr. D.A. Dube for the Respondents.

CORAM: S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.

DATED: FEBRUARY 27, 2023.

P. C. :-

1. Rule. Rule is made returnable forthwith. With consent of the parties, matter is taken up for final hearing.

2. The Petitioner has filed original application before the Central Administrative Tribunal claiming release of leave salary encashment as per the accumulated earned leave at the time of superannuation. He also claimed interest on the leave salary encashment. The Tribunal, under its judgment granted interest on the amount of leave encashment @ 7% from 01/02/2018 till the actual date of payment.

3. According to the learned counsel for the Petitioner, the Petitioner would be entitled for interest from 01/12/2011, the Petitioner having attained the age of superannuation on 30/11/2011. Learned counsel submits that the Respondent has to grant benefit of leave salary encashment suo moto. Reliance is placed on Rule 39(2)(a) of Central Civil Services (Leave) Rules, 1972. Learned counsel further submits that the Tribunal ought to have granted interest from 01/12/2011 and @ 8% per annum, which is the rate of interest payable on the gratuity amount.

4. Learned counsel for the Respondents submits that the Petitioner for the first time made an application in the year 2017 for the grant of leave salary encashment. As such, the Petitioner is not entitled for interest prior to the date of the application. Learned counsel further contends that two criminal cases are pending against the Petitioner (i) of disproportionate assets (ii) complaint by another private party. The Vigilance Department gave its clearance only in the year 2018 and immediately the amount was paid to the Petitioner. There is no delay on the part of the Respondents in paying the amount. According to the learned counsel there is no provision for grant of

interest on the amount of leave encashment. He submits that the Petitioner is not entitled for the same. He further submits that the Respondents are not guilty of deliberate or willful non-payment of leave salary encashment.

5. We have considered the submissions. The Petitioner has filed the original application and during the pendency of the original application, the Respondents made payment of the amount towards leave encashment on 19/01/2022 on receipt of Vigilance clearance in the year 2018.

6. It is submitted that the Departmental Enquiry was pending against the Petitioner on the same ground as the criminal case filed against the Petitioner for disproportionate asset. It is submitted that in the year 2022, 30% of the pension was directed to be deducted. The Petitioner has filed original application and said order of 30% deduction is stayed by the Tribunal.

7. Under Sub Rule 3 of Rule 39 of the CCS (Leave) Rules, 1972, the Authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government

servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. In that case on conclusion of the proceedings he will become eligible to the amount so withheld after adjustment of Government dues, if any.

8. In the present case, the Departmental Enquiry has not resulted in any recovery from the Petitioner. The criminal cases filed against him would also not result in any recovery.

9. In view of that Sub Rule (2)(a) of Rule 39 of CCS (Leave) Rules, 1972 would apply. The Respondents were aware that there is no possibility of money being recovered from him on conclusion of the proceedings against him. In view of that the Respondents ought to have suo moto made the payment. The vigilance department is also a wing of the Respondents itself. There was no need to keep the decision pending for 7 long years after the retirement of the Petitioner. Same could have been concluded within reasonable time. The Petitioner has attained the age of superannuation on 30/11/2011. Even assuming

one year is the reasonable period, the Petitioner would be entitled for damages in the form of interest for depriving him from enjoying the amount for such a long period. In the light of the above, order of the Tribunal is modified.

10. The Respondents shall pay interest to the Petitioner on the amount of leave salary encashment @ 7% (simple interest) from 01/01/2013 till the date of the payment of leave salary encashment.

11. Writ petition stands disposed of. Rule is accordingly made absolute.

(SANDEEP V. MARNE, J.) **(ACTING CHIEF JUSTICE)**