IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.30539 of 2008
and
M.P. No.1 of 2008

Mr.F.X.Fernando
Additional Registrar of
Co-operative Societies (Retd.) .... Petitioner

1. The Secretary,
   Government of Tamil Nadu,
   Co-operation Food and Consumer
   Protection Department,
   Fort St.George, Chennai-600 009.

2. The Registrar of Co-operative Societies,
   170, Periyar E.V.R. Road,
   Kilpauk, Chennai-600 010. ... Respondents

Prayer: The writ petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the proceeding in Letter No.21752/CH1/2007-2 dated 07.12.2007 followed by and letter No.22610/CH1/2007-2 dated 09.12.2007 on the file of the 1st Respondent to quash the same and direct the 1st Respondent to pay cumulative interest at 18%.

For Petitioner : Mr.N.Poovanalingam

For Respondents : Mrs.Geetha Thamaraiselvan,
Special Government Pleader

ORDER

The writ petition is filed praying for a writ of Certiorarified Mandamus calling for the records of the proceeding in Letter No.21752/CH1/2007-2 dated 07.12.2007 followed by letter No.22610/CHI/2007-2 dated 09.12.2007 on the file of the 1" Respondent, to quash the same and direct the 1st Respondent to pay cumulative interest at 18%.

2. The short question that arises for consideration is as to whether in the absence of an express provision providing for payment of interest on the belated payment of pension and commuted value of pension and payment under the Tamil Nadu Government Employees Special Provident Fund cum Gratuity Scheme, 1984, (hereinafter referred to as "Scheme"), interest can be claimed on such belated payments.

3. Brief facts:

3.1. The petitioner was recruited directly as Deputy Registrar of Co-operative Societies against a reserved vacancy for Emergency Commissioned Officers relieved from Indian Army on 15.02.1969. The petitioner was promoted as Joint Registrar of Co-operative Societies and thereafter as Additional Registrar of Co-operative Societies in the Department. The petitioner was also posted as Managing Director of Tamil Nadu Co-operative Housing Federation in the cadre of Additional Registrar of Co-operative Societies, a post held by the petitioner till 30.11.1988 i.e., the date of superannuation. The petitioner retired from services with effect from 30.11.1998 vide G.O.(3D) No.21 dated 13.11.2006.

3.2. The 2nd Respondent had sanctioned an aggregate amount of Rs.11,551/- under the "Scheme" on 25.06.2007. The petitioner was paid commuted value of pension of Rs.4,06,685/- on 12.04.2007 and a further sum of Rs. 10,042/- being the remaining value of commuted pension on 04.06.2007. The above are retiral benefits which according to the petitioner was due on 01.12.1998. However, the 1st Respondent had retained him in service without permitting him to retire and placed him under suspension paying only the subsistence allowance from 01.12.1998 till 13.11.2006. This is stated to be in view of pendency of certain disciplinary proceedings against the petitioner which was dropped on 13.06.2003 vide G.O.(D) No.154. However even after the charges were dropped, the respondents did not pay the retiral benefits. The petitioner thus submitted a representation on 29.09.2004, requesting to allow the petitioner to retire and settle all monetary benefits. However, there was no reply to the said representation, the 1st respondent passed the order of retirement on 13.11.2006 with effect from 30.11.1998.

3.3. In view of the considerable delay in the payment of the above retiral benefits viz., pension and commuted value of pension and belated payment under the "Scheme". The petitioner submitted two representations on 18.07.2007 regarding payment of interest for the belated payment under the Scheme and commuted value of pension.

3.4. The Respondent had however rejected the claim of interest on the only ground that there is no provision in the Rule of the "Scheme" to pay interest on the belated payment nor is there any Rule providing for interest on the belated payment of pension and commuted value of pension. The relevant portions of the impugned orders are extracted hereunder:

Letter No.21752/CHI/2007-2 dated 07.12.2007:

> *"2. In this connection, I am directed to state that there is no provision in the Rule of the Tamil Nadu Government Employees Special Provident Fund Cum Gratuity Scheme, 1984, to pay interest on the belated payment under the scheme. Hence, the request of Thiru.F.X.Fernando, Additional Registrar of Co-operative Societies (Retd.) cannot be complied with "*

Letter No.22610/CH1/2007-2 dated 09.12.2007:

> *"2. In this connection, I am directed to state that as per the Tamil Nadu Pension Rules, 1978, there is no provision to pay interest on the belated, payment of pension and also commuted value of pension. Hence, the request of Thiru.F.X.Fernando, Additional Registrar of Co-operative Societies (Retired) cannot be complied with."*

It is the above orders which are under challenge in this writ petition.

4. The question as to whether in the absence of a statutory provision/ rule/ instruction/ guideline providing for interest on belated payment of retiral benefit can be sustained is no longer *res integra*. It has been held by the Hon'ble Supreme Court that retiral benefits are not a bounty but in the nature of property and a delayed payment of retiral benefits would result in accrual of interest which will be determined in terms of provisions or statutory rules,

guidelines or norms prescribed for the purpose. However, in the absence of any statutory provision, rules, instructions, guidelines or norms, it is still open to the employee to claim interest under Part III of the Constitution in view of Articles 14, 19 and 21 of the Constitution of India. In this regard, it may be useful to refer to the following judgments of the Hon'ble Supreme Court in the case of *S.K. Dua vs. State of Haryana* and others reported in *(2008) 4 SCC 44* wherein it was held as under:

> *"11.... If there are Statutory Rules occupying 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. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of bounty is, in our opinion well-founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."*

The above judgment is followed by this Court repeatedly, some of them being:

> *i) Judgment of the Division Bench of this Court in the case of State of Tamil Nadu vs. R.Rukmani reported in (2018) SCC Online Mad 13275:*
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> *"7. ....Courts have to consider the constitutional rights of a government servant to pension, for their subsistence, for having rendered their services to government. Employer, does not suffer due to delay, but the employee suffers, and continues to suffer, till payment is made. Though several grounds have been raised, we are*

of the view that the interest of a government servant, to receive pensionary and retirement benefits, at the earliest for subsistence, should be given priority, vis-a-vis, the interest of the government. If the department and the office of the Accountant General have delayed in scrutiny and approval, why should the respondent be denied of interest for the belated payment of retirement benefits, in the light of the decision of the Hon'ble Supreme Court in S.K. Dua's case,and our answer is in favour of the respondent."

ii) Judgment of the Division Bench of this Court in the case of N.Kanthimathinathan and others vs. Commissioner reported in 2021 SCC OnLine Mad 14543:

"7. It must be recapitulated here that the Hon'ble Supreme Court of India in State of Jharkhand v Jitendra Kumar Srivastava [(2013) 12 SCC 210] has highlighted that the terminal benefits which have been conferred in favour of the employees by statute partake the character of emoluments protected as a right to property of the concerned employee under Article 300-A of the Constitution, which cannot be arbitrarily taken away without any authority of law. Since the withholding of such terminal benefits would amount to depriving the employee of his legitimate right to make use of his property at the time when he ought to have been paid the same on attaining the age of superannuation, he would have to be compensated for such delay by awarding interest."

8. The Hon'ble Supreme Court of India in a catena of decisions in State of Kerala v M Padmanabhan Nair [(1985) 1 SCC 429]. Vijay L.Mehrotra v. State of UP. (2001) 9 SCC 687] and D.D. Tewari v. Uttar Haryana Bijli Vitran Nigam Ltd. [(2014) 8 SCC 894] has reiterated that an employee has to be compensated by way of interest for delayed payment of his terminal benefits it has been ruled by the Hon'ble Supreme Court of India in SK Dua v. State of Haryana [(2008) 3 SCC 44] that even in the absence of 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 inasmuch as the retiral benefits are not in the nature of bounty and needs no authority in support thereof."

(emphasis supplied)

iii) Judgment of the Division Bench of this Court in the case of K Manian vs. A. Manimegalai reported in 2020 SCC OnLine Mad 7141:

"9. We are of the opinion that it is correct that if there was any delay in the payment of retiral benefits, then interest was certainly payable inasmuch as it has been time and again held that pensionary benefits are not a bounty and it is savings earned by an employee. This, therefore, being within the term of property of the appellants, was certainly amenable to award of interest. We may clarify that the entitlement of interest is no longer an issue res integra and has been settled by several decisions, one of them has been relied on by learned counsel for the appellants in the case of Government of Tamil Nadu v M. Deivasigamani. (2009) 3 Mad LJ 1, which in turn has relied on the Apex Court judgment in the case of S.K. Dua v. State of Haryana, (2008) 3 SCC 44 Paragraph 6 of the Division Bench judgment of the Madras High Court is extracted hereinunder for ready reference:

> *"6. The contention of the appellant that as per the Government norms, interest can be paid only on Death-cum-Retirement Gratuity. in case of delay and the same cannot be awarded to any other retiral benefits, is not tenable, in view of the decision of the Supreme Court in S.K. Due v. State of Haryana reported in (2008) 3 SCC 44. In the reported case, the appellant therein was served with three charge sheets/show cause notices in June 1998, few days before his retirement. However, he retired on 30.06.1998 on reaching the age of superannuation. He was paid provisional pension, but other retiral benefits were not given to him, which included commuted value of pension, leave encashment, gratuity, etc. They were withheld till the finalisation of disciplinary proceedings. While answering the issue as to whether the appellant therein was entitled to interest on delayed payment of retiral benefits, in the absence of any statutory rules/administrative instructions or guidelines, the Supreme Court, at Paragraph 14 of the judgment, held as follows:*
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> *"14. In the circumstances, prima facie, we are of the view that 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 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 basix But even in the absence of 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. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter. in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

10. This Division Bench judgment has been further followed by another Division Bench of this Court in the case of M. Suceela Bai v Government of Tamil Nachi, (2019) 8 Mad LJ 129"

<u>*iv) Judgment of the Division Bench of this Court in the case of Principal Secretary to Government vs. R.Krishnasamy and another reported in (2020) SCC Online Mad 11590:*</u>

"38. 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 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 Apex Court make it crystal clear that once the 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. Le 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 KV Janakiraman reported in (1991) 4 SCC 109 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 SK Duo State of Haryana reported in (2008) 3 SCC 44 and Government of Tamil Nachv M.Deivasigamani reported in (2009) 3 Mad LJ 1, has awarded 18% pa for the delayed retiral benefits to the petitioner therein"

5. Admittedly, there is delay in payment of the above retiral benefits, but the claim of interest is sought to be rejected for the delayed payment of the retiral benefits referred above, only in view of absence of express provisions which cannot be sustained in view of the law declared by the Hon'ble Supreme Court.

6. Keeping the above law laid down by the Hon'ble Supreme Court in mind, this Court is of the view that the respondents shall pay interest at 6% on the delayed payment of the above retiral benefits. The petitioner shall submit a

representation setting out the details of the delay in payment of retiral benefits and interest that is due. The Respondents shall pass orders considering the delay in payment of the above retiral benefits, however, in the event of any disagreement as to the period of delay or quantum of interest claimed, the Respondents would put the petitioner on notice and after affording a reasonable opportunity of hearing shall finalise the period of delay and the interest payable on the delayed payment of retiral benefits.

7. With the above directions, the writ petition is disposed of. No cost Consequently, connected miscellaneous petition stands closed

30.06.2023

Index:Yes/No
Speaking (or) Non-Speaking Order
Neutral Citation: Yes No

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MOHAMMED SHAFFIQ,J.

Mka

To:

1. The Secretary,
   Government of Tamil Nadu,
   Co-operation Food and Consumer
   Protection Department,
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   170, Periyar E.V.R. Road,
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