IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.610 of 2023
and
CMP. No. 6000 of 2023
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1. The Additional Chief Secretary and
   Principal Commissioner of Revenue Administration,
   Chepauk
   Chennai - 600 005.

2. The District Collector,
   Villupuram District,
   Villupuram - 605 602 .. Appellants

Versus

P. Sadhu .. Respondent

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 23.06.2022 passed by the learned Judge in WP. No. 31320 of 2017.

For Appellants	:	Mr. S. Yashwanth, Additional Government Pleader
For Respondent	:	Mr. S. Sathia Chandran

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

The appellants / department have preferred this intra-court appeal, as against the order dated 23.06.2022 passed by the learned Judge in W.P. No.31320 of 2017.

2. The respondent herein has filed the aforesaid writ petition praying to issue a Writ of Mandamus directing the appellants to pay interest at the rate of 12% per annum from 31.10.2001 on the various retirement benefits paid to him with inordinate delay, by considering his representation dated 15.07.2017, within a time frame to be fixed by this Court.

3.(i) In the affidavit filed in support of the writ petition, it was stated by the respondent/writ petitioner that he was appointed as Junior Assistant in the office of the Tahsildar, Hosur on 08.07.1965 and after successive promotion, he attained the age of superannuation on 31.10.2001, while he was working as Assistant Commissioner (Excise) (Deputy Collector), Villupuram. However, he was not permitted to retire by citing pendency of disciplinary proceedings initiated against him under Rule 17 (b) of the Tamil Nadu Civil

Services (Discipline and Appeal) Rules.

(ii) According to the respondent/writ petitioner, four charges have been levelled against him and they are that (i) he had fraudulently obtained Scheduled Caste Community certificate in his favour on 03.10.1994 by misusing his official position as the Zonal Deputy Tahsildar, Thiruvannamalai even though he is a Christian by birth; (ii) he created records with a malafide intention to show that he converted to Hindu religion by obtaining a Community certificate from Arya Samajam, Chennai certifying his re-conversion to Hindu Religion and also produced a sworn statement dated 16.06.1996 from Hindu S.C. community people as if they accepted him in their fold as one among them for the purpose of getting certain concessions extended by the Government and also for promotional avenues; (iii) the respondent, knowing fully well that change of Community in the Service Register is prohibited, submitted a claim petition to the Collector, Tiruvannamalai on 08.04.1996 for recording revised entries in his service register relating to change of his name and community and managed to get revised entries as per the order dated 17.10.1996 of the Collector, Tiruvannamalai, in violation of G.O. Ms. No.125, Personnel and Administrative Reforms Department dated 02.03.1989; and (iv) he had cheated the Government and acted in a manner unbecoming of a Government servant and proved himself thoroughly unreliable.

(iii) In order to prove the charges framed against the respondent/writ petitioner, an enquiry officer was appointed and the respondent participated in the enquiry. After conclusion of enquiry, an enquiry report dated 25.07.2003 was submitted holding that the charges against the respondent were not proved. However, the first appellant, by proceedings dated 31.12.2004 disagreed with the findings of the inquiry officer and issued a show cause notice to the respondent to submit his explanation to the disagreed views. The respondent also submitted his explanation on 06.01.2005 and prayed to accept the report of the enquiry officer.

(iv) In the meantime, the District Collector, Tiruvannamalai cancelled the community certificate issued to the respondent, against which WP No. 29898 of 2004 was filed. By order dated 03.11.2006, the learned Judge remanded the matter back to the respondents for fresh consideration. Subsequently, when the community certificate of the respondent was placed before the District Vigilance Committee for verification, the committee passed an order dated 22.05.2008 holding that the respondent did not belong to SC Community and the certificate issued to him has to be cancelled. Challenging the order dated 22.05.2008, the respondent filed WP No. 16772 of 2008. By order dated 05.07.2010, the said writ petition came to be allowed by setting aside the order dated 22.05.2008 of the District Vigilance Committee.

(v) Thereafter, the first appellant issued G.O. (2D) No.132, Revenue Department dated 20.03.2013, whereby the charges framed against the respondent were dropped. They also issued another G.O. (2D), Revenue Department dated 20.03.2013 permitting the respondent to retire from service with effect from 31.10.2001. Consequently, terminal benefits payable to the respondent, including pension, were paid to him.

(vi) The grievance of the respondent was that there was prolonged delay on the part of the appellants in disbursing the terminal benefits and therefore, he is entitled for interest at the rate of 12% per annum. In this context, he submitted a representation dated 15.07.2017 to the appellants requesting payment of interest at the rate of 12% from 31.10.2001 for the delayed payment. As the same was not considered, the respondent filed the instant Writ Petition No. 31320 of 2017 for the relief as stated supra.

4. The learned Judge, after hearing both sides, disposed of the aforesaid writ petition in the following terms:

> *"(i) the respondents / appellants herein shall pay interest at the rate of 9% per annum on pension payable to the employee for each month on the respective dates on which it falls due for the period from 31.10.2001 to 16.07.2014; and*
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> *(ii) the respondents / appellants herein shall pay interest at the rate of 9% per annum on commutation of pension for the period from 31.10.2001 to 16.07.2014;*

(iii) the respondents / appellants shall pay interest at the rate of 9% per annum on special provident fund for the period from 31.10.2001 to 03.07.2013;

(iv) the respondents / appellants shall pay interest at the rate of 9% per annum on encashment of earned leave for the period from 31.10.2001 to 12.08.2013;

(v) the amount remaining due in terms of clauses (i) and (iv) supra shall be paid by way of demand draft in favour of the petitioner along with a working - sheet showing calculation for the same under written acknowledgement and the report of compliance shall be filed by 30.09.2022 before the Registrar (Judicial) of the Court; and

(vi) there shall be no order as to costs"

Aggrieved by the order so passed by the learned Judge, the appellants are before this court with the present appeal.

5. The learned Additional Government Pleader appearing for the appellants submitted that on 31.10.2001, when the appellant was due to retire, he was not allowed to retire. However, he was paid subsistence amount of Rs.4,500/- per month until he received the commutation of pension as on 17.07.2014. Therefore, the Accountant General, while admitting the commutation of pension, has fixed the reduced pension payable to him from 01.11.2001 at Rs.2,730/- by deducting the subsistence allowance paid to him. From 01.11.2001 to 16.07.2014, a total sum of Rs.13,46,918/- was paid to the respondent towards subsistence allowance. Therefore, the respondent had continuously received monetary benefits and the amount paid to him was duly adjusted and revised at the time of settlement of the terminal benefits in the

year 2014. Even in the representation dated 15.07.2017, the respondent has admitted having received subsistence allowance continuously from November 2001 to February 2013 and after deducting such amount, the terminal benefits payable to him were paid. While so, the question of belated payment of terminal benefits, will not arise. Therefore, the direction issued by the learned Judge to pay interest would result in excess payment to the respondent than what he is entitled to. Adding further, the learned Additional Government Pleader submitted that excess payment was already made to the respondent to the tune of Rs.5,21,947/- due to calculation error and the said amount has to be recovered from him. Without considering all these aspects, the learned Judge erred in awarding interest for the settlement of retiral benefits to the respondent by the order impugned herein, which will have to be set aside.

6. On the other hand, the learned counsel for the respondent invited the attention of this Court to the averments made in para No.15 of the affidavit filed in support of the writ petition, whereunder, the respondent had furnished the dates on which various retirement benefits were disbursed to him. According to the learned counsel, the respondent was in no way responsible for the belated disbursement of the terminal benefits by the appellants. In fact, the respondent participated in the enquiry and the enquiry officer has

submitted his report on 25.07.2003 holding that the charges were not proved. However, the appellants have not passed final orders thereof. Instead, the first appellant disagreed with the findings of the inquiry officer and issued a show cause notice dated 31.12.2004 for which the respondent submitted his explanation on 06.01.2005. Even thereafter, final order has not been passed in the disciplinary proceedings. After a period of 12 years from the date of his retirement, the terminal benefits have been disbursed, for which no fault could be attributed against the respondent. Taking note of the said aspects, the learned Judge has rightly allowed the writ petition filed by the respondent and it does not call for any interference by this Court.

7. We have heard the learned Additional Government Pleader for the appellants and the learned counsel for respondent and also perused the records.

8. The issue involved in this appeal relates to the entitlement of the respondent to get interest for the so-called belated settlement of terminal benefits payable to him.

9. The appellants would vehemently contend that the question of belated settlement will not arise in this case, inasmuch as the respondent was paid subsistence allowance, until he received the commutation of pension; and

that, he was in fact paid excess amount of Rs.5,21,947/- due to calculation error. While so, the directions issued by the learned Judge in the writ petition, cannot be sustained. Whereas, it is the stand of the respondent that there was 12 years delay in settlement of the terminal benefits, for which he cannot be made responsible. To substantiate the same, the respondent, in para No.15 of the affidavit filed in support of the writ petition has provided a tabular column indicating the dates on which the terminal benefits have been settled.

10. It must be stated that this Court is not inclined to go into the correctness or otherwise of the amounts paid by the appellants and received by the respondent on various dates. This Court is also not inclined to accept the submission made by the appellants at this point of time that due to erroneous calculation, excess amount was paid to the respondent over and above the amount he is entitled to receive.

11. The law is well settled that the employee is entitled to receive interest for belated payment of retiral benefits due to him. In this case, admittedly, the respondent received his terminal benefits belatedly, after conclusion of the disciplinary proceedings. Therefore, we find no reason to interfere with the conclusion arrived at by the learned Judge that the respondent is entitled for interest for the delayed payment of the terminal

benefits due to him from the date on which it falls due.

12. At the same time, taking note of the submissions made on the side of the appellants that the respondent was paid subsistence allowance till the payment of commutation of pension; and that, he continuously received the monetary benefits and the amount already paid to him, was duly adjusted and revised at the time of settlement of the terminal benefits in the year 2014, this court directs the appellants to pass appropriate orders, with regard to payment of interest at 9% as ordered by the learned Judge, after affording an opportunity to the respondent/writ petitioner to place his calculation memo relating to the period for which, he is entitled for interest. Such an exercise shall be completed within a period of four weeks from the date of receipt of the calculation memo from the respondent/ writ petitioner.

13. Accordingly, the Writ Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] **[M.S.Q., J.]**

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Index : Yes / No
Internet : Yes / No
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To

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   Principal Commissioner of Revenue Administration,
   Chepauk
   Chennai - 600 005.

2. The District Collector,
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R. MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

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