IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2024

CORAM :

THE HON'BLE MR. D.KRISHNAKUMAR, ACTING CHIEF JUSTICE

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.A.No.2354 of 2024 and

CMP No.16553 of 2024

1. The Commissioner, Greater Corporation of Chennai,
   Ripon Buildings, Chennai-3.

2. The Assistant Commissioner, General Department,
   Greater Corporation of Chennai,
   Ripon Buildings, Chennai-3.

3. The Director of Vigilance and Anti-Corruption,
   NCB No.21 to 22 P.S.Kumarasamy Raja Salai,
   R.A.Puram, Chennai-28.

4. The Government of Tamil Nadu,
   Rep. by its Principal Secretary to Government,
   Fort St. George, Chennai 600 009. ... Appellants

Vs.

R. Usha ... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order dated 30.10.2023 made in W.P.No.9240/2020 and allow the writ appeal.

For Appellants : Mr.D.B.R. Prabhu

JUDGMENT

(Order of the Court was made by the Hon'ble Acting Chief Justice)

This Writ Appeal has been filed by the Greater Chennai Corporation to set aside the order dated 30.10.2023 made in W.P.No.9240/2020 by the learned single Judge, whereby, the appellant was directed to pay interest to the respondent at the rate of 6% p.a. from the date of her retirement till the settlement of the retiral benefits and accord notional promotion to the respondent and to re-fix the salary from 27.12.2012, on which date she was promoted as Assistant and also re-fix the pension accordingly, within a period of four weeks from the date of receipt of the copy of the order.

2. The brief facts leading to the filing of the writ appeal is as follows.

The appellant had initiated disciplinary proceedings as against the respondent and framed charges, while she was working as Junior Assistant, Zone-VII, alleging that, she had created false record by forging the Tax Assessment and thereby committed criminal misconduct and had swindled the government money for her personal gain. Subsequently, she attained the age of superannuation on 31.03.2020, however, she was placed under suspension on 28.03.2020 and not allowed to retire from service on that day, vide order dated 28.03.2020. Challenging the above order the respondent filed writ petition. Pending writ petition, the appellant filed counter affidavit stating that, all the pending disciplinary proceedings against the respondent have been dropped and she was allowed to retire from service, vide proceedings dated 30.12.2022 and also, she was promoted to the post of Assistant since from 27.12.2012, thereby, her pay was re-fixed in the post of Assistant, vide order dated 01.06.2023. Inview of the above, the learned Single Judge has disposed of the writ petition by directing the appellant to pay the retirement benefits to the respondent with interest at the rate of 6% p.a. Aggrieved by this order, the appellant has filed the instant appeal.

3. The learned counsel appearing for the appellants submitted that, the retirement benefits of the respondent, viz., GPF, SPFGS, Earned Leave & Leave on Private Affairs, Arrears of pay fixation in the post of Assistant, DCRG, Commutation, Pension arrears from 01.04.2020 to 31.03.2024 and interest at 6% on the DCRG amount have already been paid. According to

the appellants, since the charges framed against the respondent were dropped only on sympathetic consideration, not on merits, the appellant is not liable to pay interest for the retirement benefits, except DCRG. He further submitted that, as per the Rules, 6% interest is allowed only for the belated payment of DCRG amount and not for other retiral benefits and to that extent, the order passed by the learned single Judge warrants interference by this court.

4. Heard the learned counsel for the appellant and we have perused the materials on record.

5. It is the admitted facts that,

i) Pending writ petition, all the disciplinary proceedings pending against the respondent were dropped;

ii) The respondent was exonerated from all the charges and she was allowed to retire from service

iii) The respondent was promoted to the post of Assistant from 27.12.2012 and her pay was also re-fixed in that post.

iv) All the terminal benefits have also been paid to the respondent, as tabulated in the affidavit filed in CMP No.16553 of 2024.

6. The only grievance of the appellant is that, the rate of interest at 6% p.a. fixed on the terminal benefits is liable to be set aside, because, the charges framed against the respondent were not dismissed, but the disciplinary proceedings were dropped, only on sympathetic considerations and hence it cannot be construed that false charges were framed against the respondent. As such, the appellant is not liable to pay interest.

7. Admittedly, charges were framed against the respondent in the year 01.11.2012 and she was suspended from service on 28.03.2020, and the disciplinary proceedings were dropped on 30.12.2022 and all these years, she was made to suffer under the disciplinary proceedings. Considering the above facts, the learned Single Judge has granted interest at the rate of 6% p.a. from the date of retirement till the date of settlement of pensionary benefits.

8. At this juncture, it is useful to rely upon the decision of the Hon'ble Supreme Court in ***S.K.Dua -vs- State of Haryana reported in 2008 3 SCC 44,*** in which, it is held as follows.

> 11**. ....** even in the absence of any 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.

9. In the yet another decision in ***State of Andhra Pradesh and another Vs. Dinavathi Lakshmi Kameswar reported in (2021) 11 Supreme Court Cases 543***, where the State of Andhra Pradesh had challenged the order of Andhra Pradesh High Court, fixing interest at the rate of 12% on the terminal benefits to be paid by the Government, the Hon'ble Apex Court observed as follows.

> 13. The direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. Likewise, it is well settled that the payment of pension is for years of past service rendered by the pensioners to the State. Pensions are hence a matter of a rightful entitlement recognised by the applicable rules and regulations which govern the service of the employees

> of the State. The State Government has complied with the directions of this Court for the payment of the outstanding dues in two ranches. In sofar as the interest is concerned, we are of the view that the rate of 12% p.a. which has been fixed by the High Court should be suitably scaled down. While learned counsel for the respondents submits that the award of interest was on account of the action of the Government which was contrary to law, we are of the view that the payment of interest cannot be used as a means to penalise the State Government. There can be no gainsaying the fact that the Government which has delayed the payment of salaries and pensions should be directed to pay interest at an appropriate rate.
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> 14. We accordingly order and direct that in substitution of the interest rate of 12% p.a. which has been awarded by the High Court, the Government of Andhra Pradesh shall pay simple interest computed @ 6% p.a. on account of deferred salaries and pensions within a period of thirty days from today. This direction shall, however in the facts and circumstances, be confined to categories (iii), (iv), (v) and (vi) of GOMs No.26, dated 31.03.2020. We clarify that interest shall be paid to all pensioners of the State @ 6% p.a. on the deferred portion, for the period of delay. Having regard to the prevailing bank interest, the rate of 12% p.a. which has been fixed by the High Court, would need to be and is accordingly reduced.

Even though the learned counsel for the appellant is tried to convince this Court that the disciplinary proceedings were dropped only on sympathetic consideration and hence not liable to pay interest, we are not inclined to accept his contention. Once the respondent was exonerated from all the charges, even though on sympathetic consideration, the merits and de-merits of the charges cannot be taken into account for not making the payment of interest. Therefore, as per the ratio laid down in the decisions of the Hon'ble supreme Court, as stated supra, we are of the view that the order passed by the learned single judge is well founded and there is no reason to interfere the same.

10. Accordingly, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The appellant is directed to comply the order of the Writ Court, within a period of eight weeks from the date of receipt of a copy of this order.

(D.K.K., A.CJ.) **(K.B.J.)**

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Internet: Yes/No
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THE HON'BLE ACTING CHIEF JUSTICE
and
K. KUMARESH BABU, J.

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