IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **16.07.2024**

CORAM :
THE HONOURABLE MRS. JUSTICE N.MALA

Writ Petition No.13993 of 2020
and W.M.P.Nos.17381 & 17383 of 2024

S.Devapalan ... Petitioner

Vs.

1.The Commissioner,
Chennai City Municipal Corporation,
Ripon Building,
Chennai – 600 003.

2.The Regional Deputy Commissioner (Central),
Chennai City Municipal Corporation,
2nd Cross East, Pulla Avenue,
Shenoy Nagar, Chennai – 600 030. … Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the impugned order passed by the second respondent in Letter CZO.Na.Ka.No.A1/1999/2018 dated 04.06.2020 and quash the same and consequently to direct the first respondent to sanction INTEREST on the belated payment of a sum of Rs.8,14,077/- towards DCRG amount and a sum of Rs.4,58,865/- towards Commutation of Pension for the period from 01.07.2013 to 07.04.2020, in accordance with the provisions under Rule 45-A of the Tamil Nadu Pension Rules 1978 and also as settled by this Hon'ble

Court in W.P.(MD) No.1115 of 2020 dated 02.01.2020, in the light of the orders passed by the Hon'ble Supreme Court in the case of S.K.DUA VS. Union of India.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : M/s.Aswini Devi

ORDER

This writ petition has been filed challenging to call for the impugned order passed by the second respondent in Letter CZO.Na.Ka.No.A1/1999/2018 dated 04.06.2020 and quash the same and consequently to direct the first respondent to sanction INTEREST on the belated payment of a sum of Rs.8,14,077/- towards DCRG amount and a sum of Rs.4,58,865/- towards Commutation of Pension for the period from 01.07.2013 to 07.04.2020, in accordance with the provisions under Rule 45-A of the Tamil Nadu Pension Rules 1978 and also as settled by this Court in W.P.(MD) No.1115 of 2020 dated 02.01.2020, in the light of the orders passed by the Hon'ble Supreme Court in the case of S.K.DUA VS. Union of India.

2. The case of the petitioner is that the the Petitioner was appointed in the Chennai City Municipal Corporation as Surveyor on 14.09.1978 and subsequently promoted as Junior Engineer in the year 1987 and was further promoted as Assistant Executive Engineer on 15.05.2013 and superannuated on 30.06.2013. The Petitioner was allowed to retire from service in the proceedings of the Commissioner, Chennai City Municipal Corporation in Na. Ka.No. A4/1999/2013 dated 28.06.2013. However, the Commissioner, Chennai City Municipal Corporation has not sanctioned the General Provident Fund, Special Provident Fund and Encashment of Earned Leave at the Petitioner's credit as on 30.06.2013 and for the same, the petitioner has sent repeated representations. But, the same was not considered.

2.1. Therefore, the Petitioner has filed a Writ Petition before this Court in W.P.No.19614 of 2014 and this Court vide its order dated 05.08.2014 directed the Commissioner to release the General Provident Fund, Special Provident Fund and Encashment of Earned Leave at the credit of the Petitioner as on 30.06.2013, within a period of 8 weeks from the date of receipt of the copy of the order. However, since no order had been passed by the Commissioner, Chennai City Municipal Corporation as directed by this Court a Contempt Petition No.174 of 2015 was filed. Subsequently, the 2nd Respondent in the proceedings Na.Ka.No.A6/1999/2013 dated 06.04.2015 have issued orders sanctioning a sum of Rs.9,71,309/- towards Encashment of Earned Leave/Private Affairs and Special Provident Fund. However, the Commissioner, Chennai City Municipal Corporation had not released the DCRG amount, Commutation of Pension and Full Pension to the Petitioner.

2.2. Thereafter the 2nd Respondent issued a letter in Na.Ka.No.A6/1999/13 dated 06.04.2015 to recover a sum of Rs.29,45,316/- from the DCRG amount. The above impugned order of the 2nd Respondent was challenged before this Court by the Petitioner in W.P.No.25626 of 2015. This Court by its order dated 18.08.2015 set aside the impugned order of the dated 06.04.2015 and remanded the matter to the Commissioner, Chennai City Municipal Corporation to issue appropriate notice for recovery, if permissible under the Rules and Law after giving due notice to the Petitioner, within a period of 2 weeks and thereafter the Petitioner should submit his explanation within a further period of 2 weeks which can be considered by the 2nd Respondent 'within a period of 4 weeks' and take appropriate orders thereon.

2.3. The 2nd Respondent then sent a letter dated 20.10.2015 to the Petitioner to bring all the records relating to the audit objections of Rs.29,45,316/- before him on 03.11.2015 at 10.30 A.M and the same was challenged by the Petitioner in W.P.No.37085 of 2015 praying that this Court to direct the 1st Respondent to release the DCRG amount due to the Petitioner as on 01.07.2013 and also to sanction the Commutation of Pension and full Pension from 01.07.2013, with interest as admissible under Rule 45A of the Tamil Nadu Pension Rules, 1978. This Court, by its order dated 02.01.2020 directed the 1st Respondent to release the DCRG amount within a period of 8 weeks from the date of receipt of the Order.

2.4. The Commissioner issued proceedings in GD.Na.Ka.No.P12/000062/2020 dated 28.01.2020 and remitted a sum of Rs.8,14,077/- towards DCRG amount and a sum of Rs.4,58,865/- towards commutation of Pension. Subsequently, the Petitioner submitted a detailed representation dated 15.05.2020 before the Respondents, seeking interest for the belated payment. However, the 2nd Respondent in his letter CZO.Na.Ka.No.A1/1999/2018 dated 04.06.2020 has rejected the claim of the Petitioner for sanction of Interest. Aggrieved over the same, the Petitioner has come up with the present Writ Petition.

3. Learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in ***S.K.Dua vs. Union of India*** and the settled principles of this Court in ***W.P.(MD) No.1115/2020 dated 02.01.2020*** and submits that the impugned order of the 2nd Respondent issued in CZO.Na.Ka.No.A1/1999/2018 dated 04.06.2020 is totally arbitrary, improper and contrary to the provisions under the Rules, per-se-illegal and therefore liable to be quashed.

4. Learned counsel for the Petitioner has also relied on the judgment of this Court in ***S.Ramasamy vs. The Commissioner of Municipal Administration in W.P.No.19945 of 2006 dated 27.11.2006***, which was

upheld by the Division Bench of this Court in W.A.No.1111 of 2007 by its order dated 10.09.2007.

5. Learned counsel for the petitioner further submitted that the audit objection was of the year 2000 and the petitioner superannuated from service on 30.06.2013 and the respondents have not initiated any action for the audit objection in the year 2000. Hence, the petitioner is entitled for interest for the DCRG amount and commutation of pension from 01.07.2013 to 07.04.2020.

6. A counter affidavit has been filed by the second respondent on 20.06.2023. Learned counsel appearing for the respondents submitted that with respect to DCRG, this petitioner filed W.P.No.37085 of 2015 and obtained an order dated 02.01.2020 the vital verdict of the same as follows:-

> *" It is further stated in the status report that the zonal officer, zonal office – 8 had filed Audit objection clearance Statement dated: 28.12.2019, whereby the Audit objection pending with zone – 8 in para nos. 63, 65, 74, 66, 68, 75, 77, and 79 were deleted and the file with regard to the release of all terminal benefits of the writ petitioner was sent to the Account Officer (Pension) on 23.12.2019.*
>
> *Accepting the Status report filed by the 2nd respondent,*

this court is inclined to pass the following order.

The first respondent is directed to release the pension benefits to the petitioner, if he is eligible, with a period of 8 weeks from the date of receipt of a copy of this order."

In continuation with the above said order, the Joint Commissioner (R&F) passed proceeding in vide GDC.No. B12/000062/2020 dated: 28.01.2020, to release all the monetary benefits of the petitioner, after getting due concurrence from the unit Account Cell of Greater Chennai Corporation. The pending DCRG has also been settled to the petitioner on 08.04.2020. As such the order in WP No. 37085 of 2015 has been duly complied with.

7. Learned counsel appearing for the respondents would further submit that this petitioner has filed the present writ petition, seeking interest for the delayed payment of DCRG and Commutation Pension settled as mentioned. The interest for the delayed payment of gratuity would arise when the delay is caused at the end of payee i.e. the employer/here the Corporation. As per the Tamil Nadu Pension Rules 1978, under rule 70 (Recovery and adjustment of Government dues) states the follows:-

i) It shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement.

ii) Where a retiring Government servant does not clear the Government dues and such dues as ascertainable.

a)an equivalent cash deposit may be taken from him; or

b) out of the gratuity payable to him an amount equal to that recoverable on account, of ascertainable Government dues shall be deducted there from.

8. Learned counsel appearing for the respondents would further submitted that since this Writ Petitioner had not settled the audit objection, the DCRG amount could not be claimed and paid to the Writ Petitioner as per the conditions imposed in as per the retirement proceeding and council Resolution No.174/2013, dated 23.07.2013. On other hand, the delay is on the part of the petitioner. The petitioner is not entitled for any interest for the retirement benefits already settled to him. The Court in W.P.No.37085 of 2015 directed to release the pension benefits IF HE IS ELIGIBLE. Since the retirement benefits were already settled to the petitioner and the delay is on the part of the petitioner, he is not eligible for any interest for the amount already settled to him.

9. A reply affidavit was also filed by the petitioner dated 21.06.2020 to the counter affidavit filed by the second respondent dated 20.06.2023. Learned counsel for the Petitioner submits that once an employee is allowed to retire from service on 30.06.2013, there is no justified reason for keeping audit objections pending by withholding the terminal benefits of the Writ Petitioner, more particularly, the Encashment of Earned Leave and Private Affairs are the personal savings of the employee in the hands of the employer which partakes the character of property under Article 300-A of the Constitution of India, which cannot be abrogated by the employer in the name of audit objections.

10. Learned counsel for the petitioner would further submit that there is no justified reason for the Respondents for the inordinate delay for nearly 82 months, for which the Respondents cannot take shelter under the pendency of audit, without disclosing the year of audit, nature of audit, whether it was communicated to the Petitioner, whether the Petitioner has acknowledged the same etc.

11. The learned counsel for the Petitioner submits that the second respondent has not specified in any paragraphs about the details of audit objections, the year to which it belongs to, the nature of objections, the quantum of audit objection, whether the Petitioner was involved in such audit objections or it is merely in administrative nature, without any loss to the Corporation. The Appointing Authority should ascertain all these particulars referred to by the 2nd Respondent before issuing the order of retirement on 30.06.2013.

12. Learned counsel for the petitioner further submitted that only after getting the No Objection Certificate from the DVAC and clearance from the Departments concerned, the Commissioner issues the retirement order and there was no disciplinary proceedings against the Petitioner, no criminal proceedings or Vigilance case is pending against the Petitioner, no Government dues pending recovery, no Society dues pending recovery. At this juncture it is pertinent to extract the decision laid down by the Hon'ble Supreme Court of India in the case of S.K.Dua Vs., State of Haryana and the

relevant portions reads follows:

> *" 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."*

13. Heard the learned counsel on either side and perused the materials available on record.

14. In the present case, the petitioner retired from service on 30.06.2013 and according to the respondents, the audit objection is of the year 2000 and they have not taken any steps for 13 years ie., from 2000 to 2013 till the date of retirement of the petitioner in regard to the audit objection and no valid reason was also adduced for the same. The contention of the respondent corporation is that the status report filed by the second respondent has been accepted by this Court while passing the order in W.P.No.37085 of 2015 dated 02.01.2020 and the first respondent was directed to release the pension benefits to the petitioner, if he is eligible, within a period of eight weeks from the date of receipt of a copy of this order. As per the order of this Court, the pension benefits were paid to the petitioner on 08.04.2020.

15. It is pertinent to note that in the above writ petition in W.P.No.37085 of 2015, the petitioner had asked directions to the respondents to settle the DCRG and commutation of pension, since the petitioner retired on 30.06.2013, and he has not claimed any interest in that writ petition. This Court accepted the status report filed by the Respondent and directed the disbursement of pension benefits to the Petitioner within a period of eight weeks.

16. This present writ petition is filed for claiming interest so the respondent cannot take a stand that since this Court in the Writ petition 37085 of 2015 has accepted the status report and directed only in the payment of DCRG and commutation of pension to the petitioner, therefore, the petitioner is not entitled for the interest. The respondent

cannot take shelter under this order and deny interest to the Petitioner which he is entitled for the inordinate delay of 82 months caused by the respondents in settling the above benefits, i.e., after a delay of seven years from the date of his retirement.

17. This Court at the time of hearing raised a query to the learned standing counsel appearing for the respondents that after the retirement of the petitioner on 30.06.2013 whether any communication was sent to the respondents about any audit objection, for which he replied that there is one communication which was sent in the year 2014 to the petitioner and this Court directed him to produce the same. When the matter was taken up for hearing, learned Standing counsel appearing for the respondents submitted that the said document is not available as per the instruction of one Mr.B.Arul, the staff of the concerned department in the respondent corporation, who was president at that time.

18. As rightly contented by the learned counsel for the petitioner that the petitioner was not put to notice in regard to the audit objection

which is of the year 2000 i.e., 13 years before the date of his superannuation, what is the nature of the audit objection, whether the petitioner is involved etc., The non- payment of retirement benefits is not only arbitrary, but also in violation of Article 21 of the Constitution of India. The terminal benefits of the petitioner and encashment of earned leave are the personal savings of the employee in the hands of the employer.

19. It is pertinent to note that there is no criminal proceedings or vigilance case pending against the petitioner on the date of his superannuation and even the records state that the Petitioner was allowed to retire from 30.06.2013 by an order issued by the commissioner dated 28.06.2013. As per the Chennai City Municipal Corporation Council in its resolution No.174 of 2013 dated 23.07.2013 has clearly stated that:

> " தனியார் பணியாற்றிய அனைத்து மண்டலம் மற்றும் துறைக்கு தணிக்கைத்தடை முன்பண நிலுவைகள் மற்றும் ஒழுங்கு நடவடிக்கை குறித்து விவரம் **கோரப்பட்டதில் துறை/மண்டலங்களிலிருந்து "இன்மை" அறிக்கையும் பெறப்பட்டுள்ளது. மேலும் வட்டார துணை**

ஆணையர் அலுவலகத்தில் (மத்தியம்) பணியாற்றிய காலத்தில் தனியார் பெயரில் தனிப்பட்ட முறையில் தணிக்கைத்தடைகள் ஏதும் இல்லை."

20. Learned counsel for the petitioner has also placed reliance on the judgment of ***the Hon'ble Supreme Court of India*** in the case of ***S.K.Dua vs. Haryana***, wherein it was held as follows:-

> ***" 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."***

Further reliance was placed on the judgment of Division Bench of this Court in the case of the ***Commissioner, Chennai City Municipal Corporation, Ripon Building, Chennai and another Vs., S.Devapalan in W.A.No.496 of 2014, dated 26.04.2024***. For better appreciation and understanding, the relevant portion of the judgment is extracted hereunder:

> ***"2.4. The learned Judge, after hearing either side by order dated 21.09.2022, holding that even in the event of audit objections being raised, unless disciplinary proceedings is initiated against the respondent for his lapse, he cannot be***

deprived of interest for belated payment of pensionary benefits on the ground of audit objections, quashed the order of rejection passed by the second appellant and allowed the writ petition with a direction to the authorities to pay interest for belated settlement of pensionary benefits to the petitioner.

4. Today, when the matter was taken up for hearing, it was reported by the learned Standing Counsel for the appellants that the order passed by the learned Judge has been complied with. To buttress the said submission, the learned Standing Counsel produced a copy of the proceedings dated 25.04.2024 of the second appellant, for a perusal of which, it is clear that the respondent has been paid interest for belated payment of pensionary benefits."

21. In view of the above facts and circumstances of the case, it is crystal clear and evident that there is an inordinate delay and latches on the part of the respondents/corporation in settling the DCRG amount and commutation of pension to the petitioner. Hence, the petitioner is entitled for interest for the belated payment of DCRG amount and commutation of pension from 01.07.2013 to 07.04.2020 (delay of 7 years) with 7% interest for the said period.

22. Therefore, The first respondent is directed to pay the 7% interest per annum to the petitioner in regard to the belated payment of a sum of Rs.8,14,077/- towards DCRG amount and a sum of Rs.4,58,865/- towards commutation of pension for the period from 01.07.2013 to 07.04.2020 (delay of seven years) in accordance with the provisions under Rule 45-A of the Tamil Nadu Pension Rules, 1978 and also in the light of the order passed by the Hon'ble Supreme Court of India in the case of *S.K.Dua Vs Union of India, and in regard to gratuity 12% as per Section of the payment of Gratutity Act,* within a period of eight weeks from the date of receipt of a copy of this order.

23. This writ petition is disposed of with the above observation and directions. No costs. Consequently, connected miscellaneous petitions are closed.

16.07.2024

vm/tsh
Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

N.MALA,J.

vm/tsh

To:

1.The Commissioner,
Chennai City Municipal Corporation,
Ripon Building,
Chennai – 600 003.

2.The Regional Deputy Commissioner (Central),
Chennai City Municipal Corporation,
2nd Cross East, Pulla Avenue,
Shenoy Nagar, Chennai – 600 030.

W.P.No.13993 of 2020

16.07.2024.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-11-2025

CORAM

THE HONOURABLE MRS.JUSTICE N. MALA

WP No. 13993 of 2020
AND
WMP NO. 17381 OF 2020,WMP NO. 17383 OF 2020

1. S.Devapalan
Assistant Executive Engineer(Retd).,
no.30, New Colony, 4th Crioss Street,
Wes Saidapet, Chennai - 600015

Petitioner(s)

Vs

1. The Commissioner
Chennai City Municipal Corporation,
Ripon building, Chennai - 600003

2.The Regional Deputy Commissioner
(Central)
Chennai City municipal Corporation,
Ripon building, Chennai - 600003

Respondent(s)

WMP No. 17381 of 2020

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2.The Regional Deputy Commissioner
(Central)
Chennai City municipal Corporation,
Ripon building, Chennai - 600003

Respondent(s)

WP No. 13993 of 2020

For Petitioner(s):	S.N. Ravichandran T.Ranganathan
For Respondent(s):	Mr. G.Nanmaran, Spl. Gp. For Respondents M/s. Aswini Devi. K, Sc For

R2 Dt 21/06/2023
(Counter Affidavit Filed)

ORDER

Today, the above writ petition is listed under the caption "For Being Mentioned" at the instance of the learned counsel for the petitioner.

2.The learned counsel for the petitioner submitted that this Court disposed of the above writ petition on 16.07.2025. However, in the order copy, the date of the order has been wrongly mentioned as **"16.07.2024"** and hence, prayed for appropriate orders.

3.It is seen that due to inadvertence, the date of the disposal of the writ petition has been wrongly typed as **"16.07.2024"** in stead of **"16.07.2025".**

4.Hence, the Registry is directed to make suitable corrections in the order copy by replacing the date "16.07.2024" with **"16.07.2025"** and issue fresh order copy forth with.

10-11-2025

AP
Index:Yes/No
Speaking/Non-speaking order

Internet:Yes
Neutral Citation:Yes/No

WP No. 13993 of 2020

To

1.The Commissioner
Chennai City Municipal Corporation,
Ripon building, Chennai - 600003

2.The Regional Deputy Commissioner
(Central)
Chennai City municipal Corporation,
Ripon building, Chennai - 600003

WMP No. 17381 of 2020

To

1.The Commissioner
Chennai City Municipal Corporation,
Ripon building, Chennai - 600003

2.The Regional Deputy Commissioner
(Central)
Chennai City municipal Corporation,
Ripon building, Chennai - 600003

WMP No. 17383 of 2020

To

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Chennai City Municipal Corporation,
Ripon building, Chennai - 600003

2.The Regional Deputy Commissioner
(Central)
Chennai City municipal Corporation,
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N.MALA J.

AP

**WP No. 13993 of 2020
AND WMP NO. 17381
OF 2020,WMP NO.
17383 OF 2020**

10-11-2025