

(2011) 05 MAD CK 0006

In the Madras High Court

Case No : Writ Petition No. 39320 of 2005

Dr. S. Loganathan

APPELLANT

Vs

Tamil Nadu Agricultural University and The Professor and
Head Regional Research Station

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226

Tamil Nadu Pension Act, 1871 — Section 45A

Tamil Nadu Pension Rules, 1978 — Rule 33, 36, 38, 39, 42

Citation : (2011) 05 MAD CK 0006

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : Bharath Chakravarthy, for Sai, Bharath and Ilan, for the Appellant;
N. Jothi, for R1 and R2 and D. Geetha, for R3, for the Respondent

Judgement

V. Dhanapalan, J.—Heard Mr. Bharath Chakravarthy, learned Counsel appearing for the Petitioner; Mr. N. Jothi, learned Counsel

appearing for Respondents 1 and 2 and Ms. D. Geetha, learned Counsel appearing for the 3rd Respondent.

2. Challenging the order dated 17.11.2004 passed by the 1st Respondent, seeking to quash the same and for a consequential direction to the

Respondents to pay interest on the belated payment of pension, commuted value of pension, DCRG and encashment of leave (EL and UEL) on

retirement at the rate of 24% per annum from the date on which the amounts became due till date of disbursement with further interest on the

interest amount due till the date of disbursement to him, the Petitioner has come up with the present writ petition.

3. According to the Petitioner, he was working as a Professor in Tamil Nadu

Agricultural University (hereinafter referred to as "the University")

and posted at the Regional Research Station at Virudhachalam under the control of the 3rd Respondent. He attained the age of superannuation and

retired from service with effect from the afternoon of 30.09.2003 and on that day, he was relieved of all his duties. It is his case, that even before

his superannuation from service, by an order dated 19.05.2003, he was directed to submit the records and photographs and accordingly, he

submitted all the records and forms as requested therein. Though there was no problem whatsoever in his retirement, for the reasons best known

to the Respondents, he was not promptly paid his pension and other retiral benefits and he was left high and dry and was made to run from pillar to

post for grant of his pensionary and other benefits.

3a. It is the further case of the Petitioner that in spite of his repeated representations, he was not paid any of the retirement benefits for a period of

one year from the date of his retirement. After reminders and frequent visits to the office of the Respondents, the Respondents disbursed the

monthly pension, commuted value of pension, DCRG and encashment of leave to the Petitioner only in the months of September and October

2004. The following are the details of the same:

Date on

which the

S.No. Nature of Benefit Amount Date of payment

amount is

due

Monthly Pension from Rs.1,20,088/-

1 2/9/04 1/10/03

October 2003 to @Rs.9070/-per month

Commuted value of

2 Rs.2,69,168/ 3/9/04 1/12/03

pension

3 DCRG Rs.3,50,000/ 21.10.2004 1/12/03

Encashment of Leave

4 Rs.1,51,427/ 21.10.2004 2/10/03

(EL and UEL on PA)

3b. The Petitioner further stated that all his retirement amounts were paid very belatedly for no reason whatsoever. Even the above said payments

were made after repeated representations and reminders. Thereafter, the Petitioner made a representation on 30.10.2004, requesting the

Respondents to pay interest on the belated payments duly enclosing the Government Orders passed in that regard, upon which now the 1st

Respondent passed the impugned order dated 17.11.2004, refusing to pay interest on the ground that the proposals for grant of pension and other

benefits were received belatedly and hence interest cannot be paid. It is his case that even after the said letter, he made repeated representations

on 28.01.2005, 24.03.2005, 30.04.2005, 08.06.2005 and 04.08.2005 which have not evoked any positive response from the Respondents.

Therefore, having no other alternative remedy, the Petitioner has filed this writ petition for grant of the above relief.

4. Respondents have filed counter affidavit, wherein, it is stated as follows:

(i) The Petitioner, a retired Professor of Soil Science, Regional Research Station, Virudhachalam has already filed a writ petition in W.P. No.

7449/2006 praying to quash the order dated 17.5.2002, vide proceedings No. DR/TRRI/DT/3398/2002 issued by the Director, Tamil Nadu Rice

Research Institute, Aaduthurai (wherein the suspension period of 257 days have been treated as Earned Leave for 237 days and extraordinary

leave on loss of pay for 20 days) and for a further direction to the University to treat the suspension period of 257 days as Earned Leave for 90

days and extra-ordinary leave on loss of pay for 167 days.

(ii) According to the Respondents, in April 1997, a report was received from the Professor and Head Regional Research Station, Vridhachalam,

stating that Dr. S. Loganathan, the Petitioner herein had demanded and obtained money from the following beneficiaries of the Watershed

Programme (NWDPR), in his capacity as the Project leader of the said scheme.

1 Elumalai-Vallam-Rs.500,

2 Indra Elumalai - Vallam - Rs. 500

3 T. Munusamy - Valathi - Rs. 500

4 P. Panneerselvam - Andimadam - Rs. 100,

5 Chellakannu - Moorthian - Rs. 500,

6 M. Raja - Alathur - Rs. 450,

7 Dharmar - Kumilium - Rs. 500 and

8 K. Vellamuthu - Ottakoil - Rs. 500.

Therefore, an enquiry was conducted on 18.06.1997, and the enquiry committee furnished its report with the following observations:

(a) Dr. S. Loganathan had received money from the farmers who were the beneficiaries under the scheme NWDPR (Watershed Programme) of

which he is the principal investigator. He has accepted the same.

(b) He has received money as donation for the Ganapathikurichi simplified Kundaliniyoga Trust, in which he was interested, the farmers did not

accept this. They have said that the money was demanded and got from them for him only.

(c) The xerox copy of the receipts for the money received from the farmers were received from Kundaliniyoga Trust only on later date i.e (after the report made against Dr. S. Loganathan)

(iii) In the above said circumstances, based on the prima facie case having been made out, the Petitioner was placed under suspension by the

Director, Tamil Nadu Rice Research Institute, Aduthurai, under the powers vested under him and necessary disciplinary action was also initiated

against him by issuing a charge memo, in which the charges were proved beyond any reasonable doubt. Therefore, the Petitioner was awarded the

punishment of stoppage of three increments with cumulative effect and the period of suspension (from 05.08.1998 to 18.04.1999) for a period of

257 days which was ordered to be treated as leave to which he was eligible vide proceedings Proc. No. L2/4205/98 dated 05.03.1999 of the

Respondent University. Then, on appeal by the Petitioner, the punishment of stoppage of three increments with cumulative effect was modified as

stoppage of three increments without cumulative effect by Proc. No. .L2/4205/98 dated 10.12.2001. However, the order issued to treat the

period of suspension as leave to which he was eligible, was not modified. Hence, the Professor and Head of the Department, the 3rd Respondent

herein issued proceedings in Proc. No. A/1054/2001, dated 17.4.2001, treating

the suspension period as Earned Leave (237 days) and Unearned Leave on private affairs (20 days). Thereafter, the Petitioner made representation to treat the period of suspension as duty, but the same was not considered by the University.

(iv) Not satisfied with the said orders, the Petitioner made a representation on 08.02.2002, requesting to treat the suspension period as Earned Leave for 90 days and extraordinary leave for 167 days. The said request has been rejected, vide proceedings dated 17.05.2002, by the Director, TRRI, Aduthurai, which is being challenged in Writ Petition No. 7449 of 2006. It is further stated that the Petitioner retired from service on attaining superannuation on 30.09.2003. Later, in the order dated 28.10.2003 by the 2nd Respondent, the unearned leave on private affairs granted for 20 days earlier was ordered to be treated as extraordinary leave on loss of pay for 20 days, but the earned leave granted for 237 days was not revised.

(v) Consequently, on his retirement, his leave accounts had been closed and encashment of leave of 83 days of E.L. and 120 days of unearned leave on private affairs, was granted and leave salary was paid. Further, the Petitioner has expressed his willingness to treat the suspension period as E.L. for 90 days, Leave on loss pay 107 days and the unearned leave for 60 days. Therefore, the Government has been requested to clarify as to whether the various kinds of leave could be, as desired by the suspended employee while regularization of the suspension period as leave to which he is eligible and the Government has clarified that the suspension period of 257 days, already regularized as Earned leave for 237 days and UEL (PA) for 20 days, relating to the Petitioner is in order and hence the request of the above individual to reconsider the regularization of his period of suspension need not be complied with.

(vi) The Respondents further contended that after a lapse of about 3 years after the issuance of the said order and after a lapse of two and half years after his retirement, the Petitioner has filed the present writ petition and hence, the writ petition is hit by laches.

(vii) The stand taken by the Respondents in the counter affidavit is that the Petitioner belatedly submitted his pension application and he is solely responsible for the delayed payment. According to the Tamil Nadu Pension Rules

(hereinafter referred to as "the Pension Rules"), an employee need to submit his pension proposals well in advance, i.e. one year prior to the date of his retirement on superannuation, so as to examine the pension proposal, rectify the defects if any, to get ""No Due Certificates"" and ""No Audit Objection"" certificates from all the offices, where the employee had worked, get it approved by the offices, where the employee had worked, get it approved by the Local Fund Audit Department (hereinafter referred to as "LFA Department") of the Government and finally accord sanction for the payment of pension, death cum retirement gratuity, commutation of pension etc. But the Petitioner herein who retired on 30.09.2003, had submitted his pension application only after a lapse of forty nine days, i.e., on 19.11.2003, at his last working place viz., Regional Research Station, Vridhachalam.

(viii) After scrutinizing the application at the said unit office, the pension application was received by the Pension Payment Authority, viz., the Comptroller of the University only on 19.12.2003, i.e. 79 days after his date of retirement. The Service Register of the individual and pension proposal so received were verified and sent to the Deputy Director, LFA Department for concurrence on 30.12.2003. The Deputy Director, LFA Department accorded concurrence on 10.02.2004, subject to the rectification of the following defects:

(a) To ascertain the proportionate amount due from the Accountant General and realize from Government of Tamil Nadu in respect of the period of service at Government prior to 16.04.1973.

(b) To verify and record the particulars of approved pay fixation in the Service Register.

(c) To verify and record in the Service Register from 1.1.77 to 31.12.77.

(d) To workout and recover the Special Pay paid to the Petitioner as per Government orders.

(e) To verify and recover the excess payment due to wrong fixation in respect of the Petitioner.

(f) To take action to clear the pending objections till date.

(ix) Thereafter the Service Register of the Petitioner along with concurrence, was again sent to the Professor and Head, Regional Research Station,

Vridhachalam on 17.02.2004 to rectify the defects noted by the LFA Department,

on 17.2.2004. The reply, dated 23.6.2004 for the queries, has been received back by the Comptroller on 05.07.2004 stating that the Petitioner being a University employee, the commitment in respect of the sanction of pension etc., need not be ascertained from the Government of Tamil Nadu. Hence, the pension, DCRG and commutation of pension due to the Petitioner were sanctioned on 10.07.2004. Under such circumstances, the Comptroller has released the DCRG and commutation of pension due to the Petitioner on 07.09.2004 and the Professor and Head RRS, Vridhachalam, had disbursed the DCRG amount on 21.10.2004 after deducting the recoveries.

(x) According to the Respondents, the surrender leave salary on retirement was also sanctioned and paid to him on 21.10.2004. Had the pension proposal been submitted by the Petitioner in advance, i.e., one year prior to the date of retirement on superannuation, the above said details, deductions etc., could have been carried out and the pension could have been sanctioned immediately on retirement and the amount could have been paid immediately. The amount of DCRG and commutation of pension had been paid to the Petitioner in full, in the year 2004 and at present, he is getting his monthly pension regularly. The delay, if any is not wanton or deliberate and it is only due to rectification of defects in the service entries, pay fixation in the revised pay scale and mainly due to his late submission of pension papers.

(xi) The Respondents further submitted that there is a Government Order for the payment of interest on the delayed disbursement of DCRG, and it is applicable only if there is a delay of more than two months at the Head quarters only and not otherwise. According to the records, there is no delay in the Head Office, viz., the University and therefore, the Petitioner is not entitled to any interest. Further, if he is having such a right, it can be enforced with due proof of factual details and on documentary evidence before the Court of competent jurisdiction and it cannot be enforced under the writ jurisdiction under Article 226 of the Constitution of India.

(xii) The question of delay if any, with respect to payment of his pension is attributable to his own fault in presenting his pension papers with heavy delay. As per the Rules, the employee shall prepare pension papers at least 18 months in advance to his retirement. He should obtain no due

certificate, no audit objection report, etc., from various stations where he had worked.

(xiii) It is the contention of the Respondents that the Petitioner never did those matters in time. Hence, the delay if any caused is only due to him

and it is to be attributed to him and it is not because of the Respondents. The University strongly denies any delay on its part. If at all the Petitioner

is still maintaining his stand, he has to approach the Civil court to fix the liability for the delay if any caused and then to seek for payment of interest

thereon. Therefore, the writ petition is hit by laches, futility and want of details, apart from having been couched on disputed question of facts, and

it has to be dismissed.

5. Learned Counsel for the Petitioner strenuously contended that the Petitioner had sent his pension proposals in time and there is no delay on his

part, and it is the Respondents who had caused the delay in disbursing the pensionary and retirement benefits to the Petitioner. He further

submitted that pension and gratuity are no longer any bounty to be distributed by the Government to its employees and it is the valuable rights and

property in their hands and any culpable delay in settlement and disbursement thereof, must be visited with the penalty of payment of interest at the

current market rate till the date of actual payment.

5a. He further submitted that as per the Government Orders, it is the obligation on the part of the Respondents to pay interest on the belated

payment of pension, commuted value of pension, DCRG and encashment of leave (EL and UEL) on retirement. Learned Counsel further

submitted that the claim of the Petitioner is not hit by laches as he has approached the authorities in appropriate time.

5b. In support of his case, learned Counsel for the Petitioner has relied on the following decisions:

(i) a Supreme Court decision reported in State of Kerala and Others Vs. M. Padmanabhan Nair, :

1. Pension and gratuity are no longer any bounty to be distributed by the government to its employees on their retirement but have become under

the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be

visited with the penalty of payment of interest at the current market rate till

actual payment.

....

3. The instant case is a glaring instance of such culpable delay in the settlement of pension and gratuity claims due to the Respondent who retired

on 19.5.1973. His pension and gratuity were ultimately paid to him on 14.8.1975, i.e., more than two years and 3 months after his retirement and

hence after serving lawyer's notice 478 he filed a suit mainly to recover interest by way of liquidated damages for delayed payment. The

Appellants put the blame on the Respondent for delayed payment on the ground that he had not produced the requisite L.P.C. (last pay certificate)

from the Treasury Office under Rule 186 of the Treasury Code. But on a plain reading of Rule 186, the High Court held-and in our view rightly-

that a duty was cast on the treasury Officer to grant to every retiring Government servant the last pay certificate which in this case had been

delayed by the concerned officer for which neither any justification nor explanation had been given The claim for interest was, therefore, rightly,

decreed in Respondent's favour.

(ii) Another Supreme Court decision reported in Dr. Uma Agrawal Vs. State of U.P. and Another, .:

6. The case before us is a clear example of department delay which is not excusable. The Petitioner retired on 30.4.1993 and it was only after

12.2.1996 when an interim order was passed in this writ petition that the Respondents woke up and started work by sending a special messenger

to various places where the Petitioner had worked. Such an exercise should have started at least in 1991, two years before retirement. The

amounts due to the Petitioner were computed and the payments were made only during 1997-98. The Petitioner was a cancer patient and was

indeed put to great hardship. Even assuming that some letters were sent to the Petitioner after her retirement on 30.3.1993 seeking information

from her, an allegation which is denied by the Petitioner, that cannot be an excuse for the lethargy of the department inasmuch as the rules and

instructions require these actions to be taken long before retirement. The exercise which was to be completed long before retirement was in fact

started long after the Petitioner's retirement.

7. Therefore, this is a fit case for awarding interest to the Petitioner. We do not

think that for the purpose of the computation of interest, the matter should go back. Instead, on the facts of this case, we quantify the interest payable at Rs. 1 lakh and direct that the same shall be paid to the Petitioner within two months from today.

(iii) Another judgment of the Supreme court reported in Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, :

5. We have carefully considered the submissions on behalf of the respective parties before us. The earlier decision pertaining to this very university

reported in S.N. Mathur (1996) 2 ESC 211 (All) is that of a Division Bench, rendered after considering the principles laid down and also placing

reliance upon the decisions of this Court reported in R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another,

which, in turn, relied upon earlier decisions in State of Kerala and Others Vs. M. Padmanabhan Nair, and Som Prakash AIR 1981 SC 212. This

Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government

but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and

dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement

without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with

reference to amounts due towards Provident Fund, which is rendered immune from attachment and deduction or adjustment as against any other

dues from the employee. In the context of this, mere reliance on behalf of the Appellant upon yet another decision of a different Division Bench of

the very High Court rendered without taking note of any of the earlier decisions of this Court but merely proceeding to decide the issue upon

equitable considerations of balancing conflicting claims of respective parties before it does not improve the case of the Appellant any further.

Reliance placed for the Appellant university on the decision reported in Wazir Chand Vs. Union of India (UOI) and Others, does not also sound

well on the facts and circumstances of this case. It is not clear from the facts relating to the said decision as to whether the person concerned was

allowed to remain in occupation on receipt of the normal rent as in the present

case. As noticed earlier, the case of the contesting Respondent in this case is that the university authorities regularly accepted the rent at normal rates every month from the Petitioner till the quarters was vacated and that in spite of request made for the allotment of the said quarters in favour of the son of the Respondent, who is in the service of the university, no decision seems to have been taken and communicated though it is now claimed in the Court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolutions of the university resolving to waive penal rent from all Teachers as well as that of the Executive Council dated 18.7.1994 and the actual such waiver made in the case of several others cannot be easily ignored. The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the Respondent or fix liability or determine the so-called penal rent after giving prior show-cause notice or any opportunity to him before ever even proceeding to recover the same from the Respondent renders the claim for penal rent not only a seriously disputed or contested claim but the university cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory standards. The facts disclosed also show that it is almost one year after the vacation of the quarter and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the Respondent itself was again seriously disputed and to some extent justifiably too, the Appellant cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the Respondent before us. The claims of the university cannot be said to be in respect of an admitted or conceded claim or sum due. Therefore, we are of the view that no infirmity or illegality could be said to be vitiated the order, under challenge in this appeal, to call for our interference, apart from the further reason that the disbursements have already been said to have been made in this case as per the decision of the High Court.

(iv) Yet another Supreme Court decision reported in S.K. Dua Vs. State of Haryana and Another, :

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 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.

6. Per contra, Mr. N. Jothi, learned Counsel appearing for the Respondents 1 and 2 contended that in respect of those who retired other than on superannuation under FR 56(2) or 56(3) or Rules 33, 36, 38, 39, 42 of Tamil Nadu Pension Rules, 1978, where the payment of gratuity is delayed, the interest shall be allowed, for the period of delay beyond six months from the date of retirement and in other cases, it is not permissible.

Therefore, the claim of the Petitioner is totally misconceived and without authority. When the Petitioner has been informed on 19.05.2003 itself to submit the pension proposals, he submitted the same only on 19.12.2003, after a lapse of two months and nineteen days. Therefore, the delay is purely due to the fault committed by the Petitioner in sending the proposals and not on the side of the Respondents. He further contended that the writ petition is hit by laches, futility and want of details, apart from having been couched on disputed question of facts. Therefore, the claim of the Petitioner for delayed payment cannot be accepted and the writ petition has to be dismissed.

7. Heard the learned Counsel for the parties, and perused the material documents and the decisions relied on by the learned Counsel on either side.

8. A close scrutiny of the case would reveal that the Petitioner was a Professor of the Respondent-University and posted at the Regional Research Station at Virudhachalam under the control of the 3rd Respondent. He attained

superannuation on 30.09.2003. It is seen that he was asked to submit the records and photographs on 19.05.2003 in respect of his pension proposals, to which the Petitioner claims that he has submitted all the records and forms as requested immediately. But the material documents would reveal that the Petitioner has submitted his pension proposals only on 19.11.2003, at his last working place and after scrutinizing the said application at the unit office, the same was received by the Pension Payment Authority, viz., the Comptroller of the University only on 19.12.2003, after 79 days of his retirement. Thereafter, it was verified and the Service Register and pension proposal were sent to the Deputy Director, LFA Department for concurrence on 30.12.2003. The said LFA Department accorded concurrence on 10.02.2004, subject to the rectification of the defects, namely to ascertain the proportionate amount due from the Accountant General and realize from Government of Tamil Nadu in respect of the period of service at Government prior to 16.04.1973, to verify and record the particulars of approved pay fixation in the Service Register, to verify and record in the Service Register from 1.1.77 to 31.12.77, to work out and recover the Special Pay paid to the Petitioner as per Government orders, to verify and recover the excess payment due to wrong fixation in respect of the Petitioner and to take action to clear the pending objections till date. Thereafter, the Service Register of the Petitioner along with concurrence were sent to the Professor and Head, Regional Research Station, Virudhachalam, the 3rd Respondent herein on 17.02.2004, to rectify the defects noted by the LFA Department. The reply dated 23.06.2004, for the queries has been received back by the Comptroller on 05.07.2004, stating that the Petitioner being a University employee, the commitment in respect of the sanction of pension etc, need not be ascertained from the Government of Tamil Nadu. Thereafter, pension, DCRG and commutation of pension were sanctioned on 10.07.2004. The Comptroller has released the DCRG and commutation of pension due to the Petitioner on 07.09.2004, and the Professor and Head R Rs, Virudhachalam, had disbursed the DCRG amount on 21.10.2004.

9. The Petitioner claimed that the monthly pension has to be paid from 01.10.2003, but the payment was made only on 02.09.2004. Further, the monthly pension from October 2003 to August 2004 was paid in one instalment

belatedly, which attracts interest, to which the Petitioner claims at 24%. According to the Pension Rules, an employee need to submit his pension proposals well in advance, i.e. one year prior to the date of his retirement on superannuation, so as to examine the pension proposal, rectify the defects if any, to get ""No Due Certificates"" and ""No Audit Objection"" certificates from all the offices, where the employee had worked, get it approved by the offices, where the employee had worked, get it approved by the LFA Department and finally accord sanction for the payment of pension, DCRG, commutation of pension, etc. While so, it was not explained by the Petitioner as to why he has submitted his application on 19.11.2003, though he was asked to submit the records and photographs on 19.05.2003 itself. Only after that, the Respondents have proceeded to process the proposals for the pension disbursement. It is seen that the Pension Payment Authority, viz., The Comptroller of the University received the pension application on 19.12.2003, from the unit office and after verification, it was sent for concurrence to the Deputy Director, LFA Department on 30.12.2003, and it was received by them on 10.02.2004. However, the Respondents, instead of doing it immediately, took further time to rectify the defects noted by the LFA Department on 17.02.2004, from the unit office and the reply to the queries was sent on 23.06.2004, and received by the Comptroller on 05.07.2004 and further only on 07.09.2004, the amount was sanctioned and the amount was disbursed to the Petitioner only on 21.10.2004.

10. From the dates and events explained by the Respondents, it reveals that there was a delay for the period from 17.02.2004 to 23.06.2004, which they have not explained and further from 23.06.2004 to 05.07.2004. Thereafter, from 07.09.2004, after sanctioning of DCRG and commutation of pension, the unit office took more than a month to disburse the amount, which shows that there was also a delay. Even assuming that the rectification between the LFA Department and Unit office happened on 28.02.2004, it would be clear that there was a delay from 01.03.2004 to 05.07.2004 and even after the release of DCRG and commutation of pension by the Comptroller on 07.09.2004, the unit head office took more than a month to disburse the amount belatedly. For the above said two periods, the Petitioner is entitled to get the interest.

11. As regards the claim of the commuted value of pension and DCRG, the due date of payment, which was to be made on 01.12.2003, but it was paid to the Petitioner on 03.09.2004 and 21.10.2004 respectively. The sequence of events which are narrated above in respect of the pension claim, could be calculated from 01.10.2003, in the case of commuted value of pension and in respect of the DCRG, it is to be calculated from 01.12.2003. As seen from the above dates and events, in view of the delay in making the application, the Petitioner submitted his pension application only on 19.11.2003, and the same was received from the unit office by the Pension Payment Authority on 19.12.2003. Concurrence was given on 10.02.2004. Thereafter, rectification of defects was raised on 17.02.2004, and sent to the Professor and Head, Regional Research Station, Virudachalam and queries were raised and replied on 23.06.2004, and received by the Comptroller on 05.07.2004 and DCRG and commutation of pension were released by the authority on 10.07.2004 and disbursed to the Petitioner on 21.10.2004. However, the delay between 01.03.2004 to 05.07.2004 and 07.09.2004 to 21.10.2004 was not explained and as regards the DCRG, it was received only on 21.10.2004, but commutation of pension was paid on 03.09.2004 itself. Therefore, the claim of the Petitioner is only for the interest for the above said periods.

12. Lastly, in respect of the encashment of leave payable on the date of retirement, the Petitioner claims that it was due from 02.10.2003.

However, it was paid only on 21.10.2004. In this regard, it is to be noted that there was an order of suspension made against him on 17.05.2002,

and the same was challenged in the W.P. No. 7449 of 2006. This Court, after analysing the entire case of the Petitioner passed the following

order:

6. In the proceedings of the University in No. R3/4178/2006 dated 07.09.2006, the University has referred to one of the options requested by the

Petitioner i.e. to treat the leave period as follows:

(1) Earned Leave - 90 days

(2) Leave on Loss of Pay - 167 days

Since the above said option has been exercised by the Petitioner, it would be in order, if the University considers the request of the Petitioner on

the above said option and pass appropriate orders. It is needless to point out that any subsistence allowance already paid to the Petitioner during

the suspension period could be adjusted towards the amount payable to the Petitioner.

7. The impugned order of the second Respondent dated 17.05.2002 is quashed and the writ petition is allowed. The Respondents are directed to

consider the option of the Petitioner to treat the leave period as (i) Earned Leave - 90 days (ii) Leave on Loss of Pay -167 days and pass

appropriate orders in accordance with law. It is also open to the University to adjust the amount of subsistence allowance already paid to the

Petitioner during the suspension period. The Respondent University shall pass appropriate orders within a period of eight weeks from the date of

receipt of a fresh representation from the Petitioner by enclosing a copy of this order. No costs.

The order of suspension was quashed by this Court with a direction to the Respondents to consider the option of the Petitioner to treat the leave

period as (i) Earned Leave - 90 days (ii) Leave on Loss of Pay - 167 days and pass appropriate orders in accordance with law and the Petitioner

was directed to make fresh representation, which has to be considered by the Respondent-University.

13. Thereafter, the 2nd Respondent, by order dated 28.10.2003, passed the order treating the unearned leave on private affairs granted for 20

days earlier, as extraordinary leave on loss of pay for 20 days, but the Earned Leave granted for 237 days was not revised. Consequently on the

retirement of the Petitioner, his leave accounts had been closed and encashment of leave of 83 days of Earned Leave and 120 days of unearned

leave on private affairs, were granted and leave salary was paid. Further, the Petitioner has expressed his willingness to treat the suspension period

as Earned Leave for 90 days, leave on loss of pay for 107 days and the unearned leave for 60 days. Therefore, the Government was requested to

clarify as to whether the various kinds of leave could be, as desired by the suspended employee while regularization of the suspension period as

leave is eligible and the Government has clarified that suspension period of 257 days, already regularized as Earned Leave for 237 days and UEL

(PA) for 20 days, relating to the Petitioner is in order and hence the request of the Petitioner to reconsider the regularization of his period of

suspension, need not be complied with. This position has been stated by the Respondents about leave periods by its order dated 28.10.2003.

Therefore, from the above dates and events, though the Petitioner has claimed the benefit from 02.10.2003, after the order of this Court, the

Respondents have passed the order on 28.10.2003, and thereafter the Respondents have taken into account the Petitioner application on

19.11.2003, and proceeded further as stated above and released the DCRG and commutation of pension due to the Petitioner on 07.09.2004,

and disbursed the DCRG amount on 21.10.2004.

14. In the above said circumstances, the Petitioner claims interest on the disbursement of encashment of leave for the period between 01.03.2004

to 05.07.2004 and from 07.09.2004 to 21.10.2004, and the delay has not been explained.

15. The legal position is that in respect of those who retired other than on superannuation under FR 56(2) or 56(3) of Rules 33, 36, 38, 39, 42 of

Pension Rules, where the payment of gratuity is delayed, the interest shall be allowed, for the period of delay beyond 6 months from the date of

retirement.

16. Law is well settled that if there are administrative instructions, guidelines or norms prescribed for the purpose, the Petitioner may claim benefit

of interest on that basis. 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, as laid down by the Supreme Court in the decision reported in

S.K. Dua Vs. State of Haryana and Another, .

17. As per the decision of the Supreme Court reported in State of Kerala and Others Vs. M. Padmanabhan Nair, , the pension and gratuity are no

longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of the Supreme

Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof, must be visited with the penalty of

payment of interest at the current market rate till actual payment.

18. It is worthwhile to quote Section 45-A of the Tamil Nadu Pension Rules, which reads as follows:

Rule 45-A: Interest on delayed payment of gratuity:

(1) Interest at the rate of eight per cent per annum shall be payable on the death-cum-retirement gratuity paid beyond a period of two months from the date of retirement of a Government Servant.

Provided that on and from the 12th June 1987, the rate of such interest shall be as follows:

(a) seven per cent per annum beyond a period of three months and up to one year; and

(b) ten per cent per annum beyond a period of one year; Provided further that no such interest shall be payable,

(a) where the institution of departmental or judicial proceeding against the retiring Government servant concerned is pending; and

(b) for the fraction of a month.

(1-A). The period beyond which such interest is payable, shall be as follows:

(i) in the case of a Government Servant retired otherwise on superannuation and where the Death-cum-Retirement Gratuity is withheld on account

of disciplinary proceeding pending against him.

(a) three months from the date of retirement where the Government Servant is exonerated of all charges and where the Death-cum-Retirement

Gratuity is paid on the conclusion of disciplinary proceedings;

(b) three months from the date of death where the disciplinary proceedings are dropped on account of death of a Government servant;

(c) three months from the date of issue of orders by the competent authority allowing payment of Death-cum-Retirement Gratuity where the

Government Servant is not fully exonerated on the conclusion of disciplinary proceedings and where the competent authority desires to allow

payment of Death-cum-Retirement Gratuity;

(ii) six months from the date of retirement of a Government Servant otherwise than on superannuation under Fundamental Rule 56(2) or 56(3) or

Rules 33, 36, 38, 39 and 42 of the Tamil Nadu Pension Rules, 1978;

(iii) six months from the date of death of a Government Servant while in service and where the delay is not caused on account of more than one

claimant;

(iv) three months from the date of issue of orders revising the emoluments where the amount of Death-cum-Retirement Gratuity already paid is

enhanced on account of revision of emoluments; and

(v) six months from the date of absorption in the case of permanent absorption in the Public Sector Undertaking or Autonomous bodies otherwise

than on enmass transfer on conversion of Government department or a part thereof into Public Sector Undertakings or Autonomous bodies.

(2) The Government shall be the authority competent to sanction such interest.

19. Here is a case, where the only fault committed by the Petitioner, is the delay in submitting the application. Even assuming that part of the delay

was caused by him, after clearance by the LFA Department, the queries raised could have been rectified within a reasonable time before February

2004, but there was a delay on the part of the Respondents and such delay, when it is not explained by them, attracts interest and therefore, the

Petitioner is entitled for interest for the above period on each count discussed above and for the periods calculated.

20. The pension or gratuity being no longer a bounty, has to be disbursed on the date of retirement of a Government servant. The Apex Court in

O.P. Gupta Vs. Union of India (UOI) and Others, crystallized the payment of interest for the delayed payment as a normal practice in the following

words:

24. Normally, this Court, as a settled practice, has been making direction for payment of interest at 12 per cent on delayed payment of pension.

There is no reason for us to depart from that practice in the facts of the present case.

21. On conclusion and upon perusal of the legal principles and ratios laid down by the Supreme court, the impugned order issued by the first

Respondent, cannot be sustained and accordingly, it is quashed, with a direction to the Respondents to pay 12% interest. In respect of the belated

payment of pension, commuted value of pension and encashment of leave (EL and UEL), the interest shall be paid for the period from 01.03.2004

to 05.07.2004 and further period of delay from 07.09.2004 to 21.10.2004 and in respect of DCRG, the interest shall be paid from 1.4.2004 to

5.7.2004 and from 7.9.2004 to 21.10.2004. The Respondents shall pay the above said interest to the Petitioner, with regard to pension,

commutation of pension, DCRG and encashment of leave, within a period of four weeks from the date of receipt of a copy of this order.

22. With the above directions, the Writ Petition is disposed of. No costs.