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W.P.(MD)NO.18093 OF 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2026

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MRS.JUSTICE R.KALAIMATHI

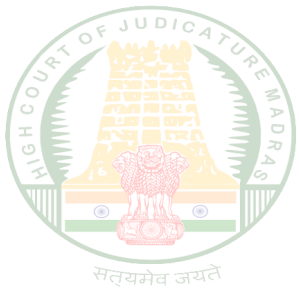
W.P.(MD)No.18093 of 2017

N.Roby,
S/o.Nesamani,
District Judge(Rtd),
414-A, 7th Middle Street,
Thiyagaraja Nagar,
Tirunelveli – 627 011,
Tirunelveli District.

... Petitioner

Vs.

1. High Court of Madras,
Madras,
Rep. By the Registrar General.
 2. The Principal Accountant General(A&E),
New No.361, Anna Salai,
Teynampet, Chennai – 18.
 3. The Registrar (Administration),
The Madurai Bench of Madras High Court,
Madurai.
 4. The Pay and Accounts Officer,
Pay and Accounts Office, Madurai.
 5. The State of Tamil Nadu,
Rep. By,
Principal Secretary to Government,
Public (Special B) Home (Courts-I) Department,
Chennai – 600 009.
- ... Respondents



Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the fifth respondent in his proceedings G.O.Rt.No.2170 Public (Special B) Department dated 20.06.2017 and quash the same and directing the respondents to pay the interest at the rate then and there fixed under Rule 45-A(I-A)(i)(a) of TNPR 1978 for the belated payment of DCRG and at the rate of 12% per annum for the belated payment of Earned Leave, Unearned Leave on Private Affairs, Pension Arrears and Commuted Value of Pension within a stipulated time as fixed by this Court.

For Petitioner : Mr.K.Jayamohan,
for Mr.V.Nagarajan.

For Respondents : Mr.G.Thalaimutharasu for R-1 & R-3.

Mr.P.Gunasekaran for R-2.

Mr.S.S.Madhavan,
Additional Government Pleader
for R-4 & R-5.

* * *

ORDER

The writ petitioner joined judicial service in 1983. He reached the age of superannuation at 60 years on 30.11.2010. He was then working as III Additional District Judge(PCR), Madurai. On



27.10.2010, he was placed under suspension and vide proceedings

dated 29.11.2010, he was not permitted to retire but retained in service. Subsequently, vide proceedings dated 22.07.2011, the disciplinary action initiated against the petitioner was dropped. His suspension was deemed to have been revoked and he was deemed to have retired from the Tamil Nadu State Judicial service on 30.11.2010. The petitioner was able to encash his earned and unearned leave only on 16.02.2012. The petitioner submitted his pension application on 19.03.2012 which was forwarded to the Principal Accountant General, Chennai. On 30.05.2012, the petitioner's service particulars were called for. Upon receipt of the same, the second respondent issued authorisation for pension, commuted value of pension and DCRG. On 07.09.2012, cheque for Rs.10 Lakhs being the DCRG amount was forwarded to the Principal District Judge, Tirunelveli.

2. Since the petitioner received his pensionary benefits including DCRG belatedly, he sought payment of interest for the period of delay. Since his representation did not elicit any response, he filed W.P.(MD)No.13944 of 2014. Vide order dated 03.04.2017, the

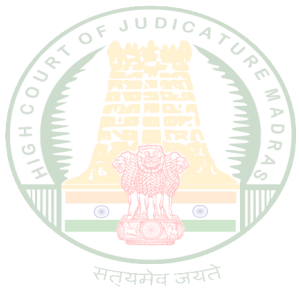


Government was directed to consider his request. The Government

vide the impugned G.O.Rt.No.2170 Public (Special B) Department dated 20.06.2017 sanctioned only a sum of Rs.14,665/- on the belated payment of DCRG of Rs.10 Lakhs. A working sheet was also annexed to the G.O. According to the Government, interest was payable only with effect from 01.07.2012 to 31.08.2012 at 8.8% p.a. Challenging the said G.O and seeking payment of interest for the belated payment of DCRG, earned and unearned leave and commuted value of pension, this writ petition has been filed.

3. The learned counsel appearing for the petitioner submitted that as per the provisions set out in Tamil Nadu Pension Rules, the petitioner is entitled to interest as prayed for. He further submitted that the issue is no longer res integra. He relied on the following decisions:-

- i) W.A.(MD)No.599 of 2015(Cardamom Planters' Association College Vs. G.Selva) dated 06.07.2015.***
- ii) W.P.No.32476 of 2018 (S.M.Khasim Vs. The Principal Secretary to Government, Chennai) dated 28.02.2022.***



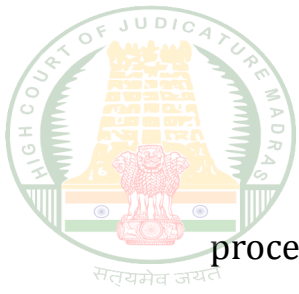
iii) W.P.(MD)No.10376 of 2014

**WEB COPY (D.Chandrasekaran Vs. The State of Tamil Nadu) dated
14.12.2018.**

4. Per contra, the learned Standing counsel for the second respondent and the learned Standing counsel for the High Court as well as the learned AGP for the Government submitted that the petitioner is not entitled to any relief.

5. We carefully considered the rival contentions and went through the materials on record.

6. It is not in dispute that the petitioner reached the age of superannuation on 30.11.2010. But he was placed under suspension and retained in service. However, the disciplinary action was eventually dropped and the petitioner was fully exonerated. Therefore, Rule 45-A(I-A) of the Tamil Nadu Pension Rules will apply. It states that interest on DCRG is payable three months from the date of retirement where the Government servant is exonerated of all charges and where the DCRG is paid on the conclusion of disciplinary



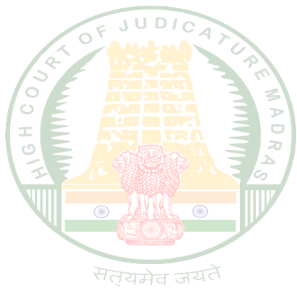
proceedings. The impugned G.O has failed to take note of this statutory rule. On this ground, the impugned G.O is quashed and the fifth respondent is directed to pay interest for the belated payment of DCRG amount in terms of Rule 45-A(I-A) of the Tamil Nadu Pension Rules, 1978.

7. It is not in dispute that the petitioner submitted his application only on 19.03.2012. The officer of the Principal Accountant General, Chennai had acted with sufficient speed and cannot be faulted at all. Question arises whether the process of settling the pensionary benefits should commence only upon receipt of application from the retired employee. On this issue, there was considerable debate at the bar. While the petitioner's counsel relied on Rule 58(2) and Rule 57 of the Tamil Nadu Pension Rules, the learned Standing counsel for the second respondent laid stress on Rule 53. Rule 53, Rule 57 and Rule 58(1)& (2) read as follows:-

“53. Submission of application for pension.

- Every Government servant shall submit in writing an application for pension in Form 5;

Provided that a [self-drawing Government servant] shall send his application direct to the



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Audit Officer and [non-self drawing Government servant] to the Head of Office.

(2) Every Government servant shall submit his application for pension at least one year in advance of the date of his anticipated retirement;

Provided that-

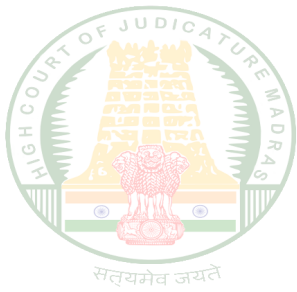
(i) in a case in which the date of retirement cannot be foreseen one year in advance, the application shall be submitted immediately after the date of retirement is settled; and

(ii) a Government servant, proceeding on leave preparatory to retirement in excess of one year, shall submit the application at the time of proceeding on such leave.

...

57. Preparation of pension paper.- The Audit Officer concerned shall undertake the work of preparing pension papers in Form 5 two years before the date on which a Government servant is due to retire on superannuation, or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier. This work shall not be delayed till the Government servant has actually submitted his application for pension.

Note. - (1) In this rule and in rules 58, 59 and 60 the expression "Government servant" means a



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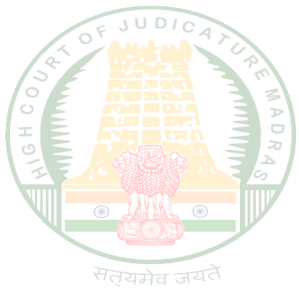
self drawing Government Servant whose pay and allowance are drawn by himself.

Note (2)- Where the office of the authority competent to sanction pension to a retiring Government servant is situated in the circle of an Audit Officer other than the Audit Officer who audits the pay and allowances of such retiring Government servant immediately before his retirement the later, Audit Officer shall be the Audit Officer for the purpose of this rule.

58. Further action to sanction pension.

(1)(a) The Audit Officer concerned shall send to every Government servant, under intimation to the Head of the Department, or where their retiring Government servant is himself the Head of the Department, to the Administrative Department concerned, the application for pension in Form 5 one year in advance of the date on which the Government servant attains the age of superannuation or before the date of his anticipated retirement, if earlier with the request that it should be returned to him duly completed within a period of [six months] from the date of issue of intimation to the Government servant by him but in no case later than the actual date of retirement.

(b) The Audit Officer shall also draw the



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attention of the retiring Government servant to the provisions of rule 78.

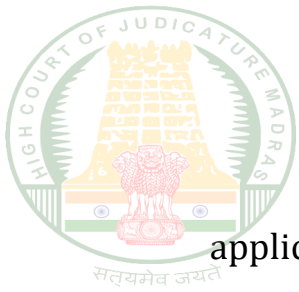
(2) On receipt of a copy of application for pension from the Audit Officer, the retiring Government servant shall return it duly completed to the Audit Officer within the period mentioned in sub-rule (1) under intimation to the Head of the Department or the Administrative Department if he is himself the Head of the Department.”

8. It is true that the preparation of pension papers should take place independently and ought not to await the submission of the pension application. But there can be no disbursement of pensionary benefits unless an application is submitted. It is only the retiring or retired employee who can submit the application. We, therefore, hold that if the applicant belatedly submits his pension application, he cannot take claim interest for the period of delay which is attributable to him. The maxim “one cannot take advantage of one's own wrong” is applicable in such cases. No doubt, Rule 58(2) speaks of receipt of the pension application from the Audit Officer through proper channel. The Rule further states that thereafter, the retiring Government servant shall return it duly completed. In our view, this



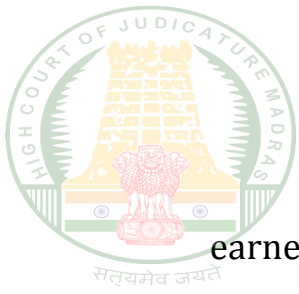
provision has become obsolete and cannot have any application in the present context. Statutory provisions can become redundant due to march of time, technological developments and societal changes. There are still sections in the statute pertaining to service of notices through beat of tom-tom. Some years back, a few hundred statutes were repealed wholesale. Even if they had not been repealed, they would still be lying in limbo in the statute books. Such fate can befall individual provisions too. Certain administrative formalities and requirements though contemplated by rules and regulations may not be observed. They might have ceased to be in practice. They may no longer be in vogue. No litigant can take advantage of such archaic provisions. The doctrine of obsolescence is applicable in such cases.

9. The rules envisage submission of the pension application in Form V. It is not as if Form V is a scarce commodity which is exclusively available with the Audit Officer. It is freely available. Therefore, the applicant cannot be heard to say that since he did not receive Form V from the Audit Officer, he could not submit the pension application. The petitioner's proceedings got closed on 21.12.2011. Nothing stopped him from submitting his pension



application immediately thereafter. He delayed the matter by few more months. We are therefore of the view that for this delay from 22.12.2011 till 18.03.2012, he will not be entitled to any interest for the DCRG amount.

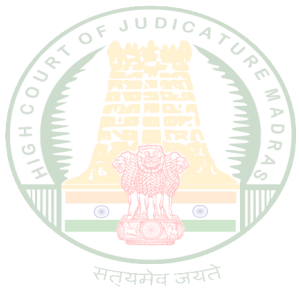
10. The question of paying interest on the commuted value of pension does not arise. Note III to Rule 9 of the Tamil Nadu Civil Pension Commutation Rules states that no Government servant against whom departmental or judicial proceedings have been instituted shall be eligible to commute a fraction of the provisional pension during the pendency of such proceedings. The right to seek commutation of pension would arise only upon the conclusion of the departmental proceedings. The proceedings against the petitioner were concluded only in December 2011. The Pension Rules do not provide for payment of interest on the commuted value of pension in such cases. There is no provision corresponding to Rule 45-A(I-A) providing for payment of interest on the commuted value of pension. Therefore, we cannot sustain the demand made by the petitioner for payment of interest under this head. For the very same reasons, we are not in a position to award interest for the encashed value of



earned and unearned leave.

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11. No doubt, the petitioner's pensionary benefits were settled belatedly. But the fact remains he was retained in service after he reached the age of superannuation. He continued to receive subsistence allowance equivalent to provisional pension till the proceedings were dropped. The petitioner's right to receive pension arose only on such dropping of proceedings. The petitioner submitted his pension application only in March 2012. Within few months thereafter, his benefits were settled and he began to draw regular pension. A person who was retained in service and who was in receipt of subsistence allowance, on his exoneration, cannot seek interest for belated payment of his terminal benefits except in the case of DCRG. Of course, it goes without saying that within three months from the submission of the pension application, the benefits have to be settled. He would be entitled to demand interest for any delay thereafter. In this view of the matter, we are unable to concur with the view taken in the decisions relied on by the learned counsel for the writ petitioner.



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12. We have upheld the claim of the petitioner for payment of interest at the statutory rate on the belated settlement of the DCRG amount. Since the petitioner was not paid the same, this DCRG component would carry interest at the rate of 6% p.a. with effect from 08.09.2012 till date of payment. The impugned G.O is accordingly modified. The fifth respondent shall quantify the amount payable to the petitioner in the light of this order and pay the same within twelve weeks from the date of receipt of a copy of this order. This writ petition stands partly allowed. No costs.

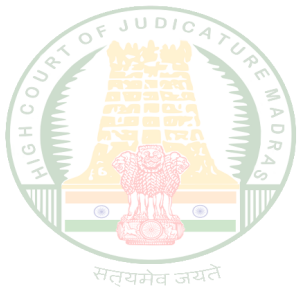
(G.R.SWAMINATHAN, J.) & (R.KALAIMATHI, J.)
21st January 2026

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

PMU

To:

1. The Pay and Accounts Officer,
Pay and Accounts Office, Madurai.
2. The Principal Secretary to Government,
Public (Special B) Home (Courts-I) Department,
Chennai – 600 009.



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W.P.(MD)NO.18093 OF 2017

G.R.SWAMINATHAN, J.

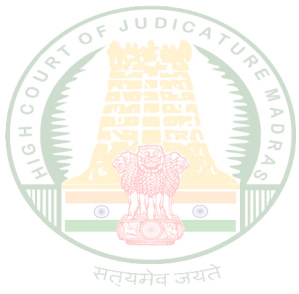
AND

R.KALAIMATHI, J.

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W.P.(MD)No.18093 Of 2017

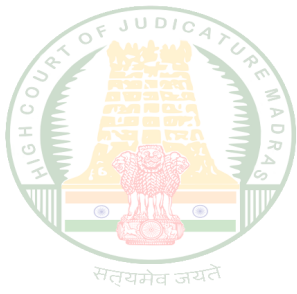
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7. It is seen that the Government has issued G.O.Ms.No.125 Health and Family Welfare (IMI-1) dated 10.04.2018, wherein the Adhoc Rules relating to temporary posts in Government Ayurveda Medical College and Hospital in Tamil Nadu Medical Service was framed. Admittedly the said Adhoc Rules was framed pending writ petition. The contention of the respondents is that since the

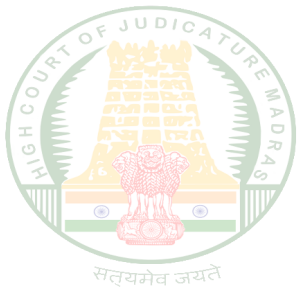


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petitioner's appointment is only on 26.12.2011, the petitioner cannot claim right over the said post. Especially after framing of the rules, any appointment to any post will be as per the said Rules. Therefore, the petitioner is not entitled to any relief and prayed to dismiss the writ petition. The contention of the petitioner is that, if the plea of the respondents is accepted, then the 4th respondent who was also appointed in the same year i.e. 2011, which is well before framing of the Adhoc Rules is not entitled to appointment and therefore, the said appointment should also be considered as 10(a)(i) appointment under the Tamil Nadu State and Subordinate Rules. But the respondents have refuted the said contention and submitted that based on the qualification prescribed by the Central Council of Indian Medicine, the petitioner cannot have any grievance.

8. By taking all these facts into consideration, this Court is not able to accept the contention of the respondents. When the Adhoc Rules are framed on 10.04.2018, any appointment prior to the same ought to be considered as 10(a) (i) appointment under the Tamil Nadu State and Subordinate Rules. The petitioner as well as the 4th respondent are on the same ground and they ought to be considered



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as 10(a)(i) appointees. In such circumstances, the 4th respondent appointment based on the notification and the qualification prescribed by the Central Council of Indian Medicine will not make the appointment free from the clutches of 10(a)(i) and hence the 4th respondent cannot have merit over the petitioner. Either the respondents should treat all the 10(a)(i) appointees equal or should go for fresh recruitment under Adhoc Rules. Hence, this Court is inclined to quash the order issued to the 4th respondent.

9. It is pertinent to mention that the 10(a)(i) employees are in the service for more than 10 years and they would be in their mid service. If they are not regularized, at this point of time they could neither be in service nor be in their private practice. When the Government intended to open the new College, the petitioner and the other similarly placed persons with a fond hope that their service would be regularized, accepted the 10(a)(i) appointment, hence the candidates' right ought to be protected.