



2024:KER:18393

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

MONDAY, THE 4TH DAY OF MARCH 2024 / 14TH PHALGUNA, 1945

WA NO.1860 OF 2023

JUDGMENT IN WP(C) NO.33298 OF 2022 OF HIGH COURT OF KERALA
DATED 18.10.2023

APPELLANT/PETITIONER :-

P.V.NANDAKUMAR, AGED 62 YEARS
EXECUTIVE ENGINEER (RETIRED),
OFFICE OF THE EXECUTIVE ENGINEER, P.H.DIVISION,
THODUPUZHA, IDUKKI - 685 581 RESIDING AT
PALAKKAPARAMBIL (HOUSE), ALAGAPPA NAGAR P.O.,
THRISSUR, PIN - 680 302

BY ADVS.
VARUN C.VIJAY
DIVYA CHANDRAN

RESPONDENTS/RESPONDENTS :-

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF WATER RESOURCES, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 2 MANAGING DIRECTOR,
KERALA WATER AUTHORITY, JALA BHAVAN, VELLAYAMBALAM,
THIRUVANANTHAPURAM, PIN - 695 033
- 3 CHIEF ENGINEER (CENTRAL REGION),
OFFICE OF THE CHIEF ENGINEER (CENTRAL REGION),
JALA BHAVAN, HOSPITAL ROAD, COCHIN, PIN - 682 016
- 4 SUPERINTENDING ENGINEER,
OFFICE OF THE SUPERINTENDING ENGINEER, P.H.CIRCLE,
KERALA WATER AUTHORITY, MUVATTUPUZHA, PIN - 686 669
- 5 EXECUTIVE ENGINEER
OFFICE OF THE EXECUTIVE ENGINEER,
P.H.DIVISION, KERALA WATER AUTHORITY,
THODUPUZHA, IDUKKI, PIN - 685 581



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WA NO.1860 OF 2023

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BY ADVS.
SRI.GEORGIE JOHNY
SRI.SAIGY JACOB PALATTY, SR.GP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
04.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT
Dated this the 4th day of March, 2024

Anu Sivaraman, J.

Heard the learned counsel on either side.

2. It is submitted by the learned counsel for the appellant that the judgment of the learned Single Judge rejecting the writ petition filed by the appellant for interest on the ground that the interest should have been claimed in appropriate proceedings is not proper in view of the fact that in the facts of the instant case, the appropriate proceedings claiming interest could only have been a writ petition before this Court.

3. The learned counsel for the appellant relies on the judgment of the Apex Court in **S. K. Dua v. State of Haryana and another** [2008 KHC 4047] to contend that the question of interest of retirement benefits is to be considered by this Court itself. In paragraph 11 of the said judgment, the Apex Court considered the contentions and found that if there are statutory rules, the appellant could claim payment of interest on the basis of the said rules. 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. It is, therefore, contended that the dismissal of the writ petition on the



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ground that the appellant ought to have availed other remedies was not correct or proper.

4. The learned counsel for the appellant also relies on a decision of the Apex Court in **Union of India and others v. Dr. O. R. Nijhawan and others** [2019 KHC 6002] to contend that where the question raised in a writ petition is left open, the party is not precluded from raising the same issue again in a later writ petition and the principles of res judicata or estoppel are not attracted. The learned counsel also brought to our notice of the decisions of Division Bench of this Court in **Vilasini R. v. State of Kerala and others** [2015 KHC 306] and **Vijayan V. S. v. Kerala State Electricity Board Ltd., Tvm. and others** [2021 KHC 3847] in support of his contentions.

5. Respondents 2 to 5 have placed a counter affidavit on record. It is submitted that appellant has claimed 12% interest per annum for the period from 31.5.2016 to 14.10.2022 for the delayed payment of entire DCRG amount of Rs.14,00,000/-. It is submitted that the appellant had been informed that there are liabilities against him and notices have been issued, to which, he did not respond. It is further contended that there was delay in disbursing the retiral benefits on account of serious financial difficulties faced by the Water Authority and that the DCRG of pensioners who



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retired during May, 2016 was released only in April, 2018. It is, therefore, contended that the appeal is liable to be dismissed *in limine*.

6. The learned counsel for the respondents also places reliance on a decision of this Court in **Vijayakumaran Nair v. SBT** [2005 KHC 163]. A learned Single Judge of this Court had considered the writ petition filed with the sole prayer claiming interest for the delayed payment of retirement benefits from the date on which it fell due till the date of disbursement. It was found that this Court exercising extra ordinary jurisdiction under Article 226 of the Constitution of India need not consider the disputed claim for interest since the said dispute can more effectively and appropriately be decided by the civil court. It was held that the claim for money by way of interest does not deserve to be adjudicated by this Court in exercising of the extra ordinary original jurisdiction conferred by the Constitution of India as distinguished from writ petitions filed claiming retirement benefits and interest on delayed payments together.

7. Having considered the contentions advanced, we notice that the Apex Court having decided the question of payment of interest and the question with regard to consideration of the claim for interest by the High Court exercising jurisdiction under Article



226 of the Constitution of India, the decision in **Vijayakumaran Nair v. SBT** no longer holds the field. The decision of the Apex Court in **S. K. Dua v. State of Haryana and another** was rendered in a case where the claim raised was specifically for interest on delayed payment of retiral benefits alone. Further, in the instant case, it is not in dispute that there was no liability fixed as against the appellant which was recoverable from his DCRG with the period of three years from the date of his retirement.

8. In the above view of the matter and in view of the judgments relied on by the learned counsel for the appellant, we are of the opinion that the rejection of the writ petition on the ground that the appellant ought to have approached other authorities or filed a suit for realisation of interest cannot be accepted. In view of the specific facts of the instant case, where there is no allegation that any liability had been fixed with notice to the appellant within the time provided under Note 3 to Rule 3 of Part III KSR, the claim for interest was liable to be considered by the learned Single Judge in the writ petition itself. In the facts and circumstances of this case, we are of the opinion that the appellant is entitled to interest from the date on which his DCRG would have been paid in normal circumstances.



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In the above view of the matter, we direct that interest on the amount of DCRG paid to the appellant from 1.5.2018 to 14.10.2022 is liable to be calculated and disbursed to the appellant at the rate of 7% per annum, within a period of four months from the date of receipt of a copy of this judgment. The Water Authority will be free to recover the interest so paid from the officers who are responsible for the delay in payment of the DCRG.

**Sd/-
ANU SIVARAMAN
JUDGE**

**Sd/-
C. PRATHEEP KUMAR
JUDGE**

Jvt/6.3.2024