

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) 3694/2008**

% **Date of Decision: 18th November, 2009**

BASANTI DEVI Petitioner
! **Through: Mr. Kaanan Kapur, Advocate**

Versus

\$ **THE REGIONAL COMMISSIONER (PENSION) EMPLOYEES**
PROVIDENT FUND ORGANISATION & ORS. Respondents
Through: Mr.Rajesh Manchanda &
Ms. Alka Srivastava, Adv for R-1.

CORAM:
* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the digest?

JUDGMENT

P.K.BHASIN, J (ORAL)

The petitioner by way of this writ petition under Article 226 of the Constitution of India has raised a grievance against the respondents 1-3 that after the death of her husband, who was a member of the Employees' Provident Fund Organization Pension Scheme, 1995 under PPP No. NHP 2321 and establishment Code No. DL 3580/12 and had retired from Government job on 28/02/99 but before his retirement he had started getting his pension under the said Scheme, she had become entitled to receive the pension being the nominee of her husband but was not paid for years together. The pension payable initially was for Rs.394/- per month but subsequently it was increased to Rs.529/- per month and the same used to be credited in the account of the deceased

pensioner with respondent no.4 – Punjab National Bank. The petitioner's husband died on 25th September, 2002 but during his lifetime he had been paid his pension upto April,2002 only. In routine, the respondents 1-3 should have started paying widow's pension to the petitioner within a reasonable period after the death of her husband but for years together she was not paid the pension even after her visits to the office of the respondents 1-3 several times, despite her being of old age and in bad health. Instead of the officials co-operating with her they had been admonishing her for bothering them again and again and she was being put off on one ground or the other. During one of her visits to the office of the respondents 1-3 she was informed that the pension was in fact being credited to some other person's account. It was only in June, 2006 that she was paid Rs.47,329/-.

2. Since the petitioner did not feel satisfied with the amount disbursed to her she had been representing to the respondents to give her the details of the amount paid to her and having failed to get any response from the respondents she filed the present writ petition for seeking direction to the respondents to give the details as to how the amount of Rs.47329/- had been worked out and to make good the deficiency with interest @ 18% for the period of delay in disbursement of her legitimate pension as also for taking action against the erring officials.

3. In the writ petition, the petitioner has averred that for getting the pension amount from the respondents she had been visiting the respondents for years but nobody was even hearing to her pleas and in fact she was being admonished by the officers for bothering them again and again and she was being admonished for one reason or the other. It was claimed that because of the actions of the respondents in not releasing her pension when it was due she was put to immense hardship and particularly considering the reason that she was suffering

from old age ailments and despite that her grievances were not being considered by the officers of the respondents.

4. This Court while issuing notice of this writ petition had called upon the respondents to explain the delay of four years in release of the pension to the petitioner and also to inform the Court about the action, if any, taken against the erring officials who were responsible for the delay in disbursement of the pension to the petitioner and also to give the break-up of Rs.47329/- and to clarify whether that amount had any component of interest for the delayed payment.

5. The respondents 1-3 in their counter affidavit had sought to justify the delay in the release of the pension to the petitioner and it was pleaded that the delay was not deliberate or intentional. No response was, however, given to other directions given by the Court. During the pendency of the writ petition, the respondents, however, realised that the petitioner was paid less pension and a sum of Rs. 19,395/- more was payable to her and accordingly that amount was paid to her in July, 2008. With that payment the petitioner's pension claim from April 2002 to September, 2002, during which period even her husband had not been paid his pension, and then from October, 2002 till June 2008, when pension became payable to the petitioner stood cleared and now from July, 2008 she is regularly getting her pension.

6. During the pendency of the writ petition, an additional affidavit dated 10th November, 2009 was filed wherein it was stated that upon enquiry being conducted to find out the reasons for the delay in the disbursement of the pension to the petitioner and the officials responsible for the delay it had been found that there was definitely a delay on the part of the department in release of the pension amount to the petitioner and as a result of the inquiry conducted it was found by the Inquiry Officer that "All officials of the level section Supervisor upwards are responsible jointly of lack of initiative. However, none of them can be identified to the solely responsible and it was a failure of the entire system."

7. The aforesaid additional affidavit submitted on behalf of the respondents, in my view, clearly washes-off the stand taken by them in their counter affidavit wherein the delay was stated to be unintentional. In these circumstances, it was submitted by learned counsel for the petitioner that now nothing remained in this matter which could disentitle the petitioner to the reliefs sought by her in this writ petition. It was also submitted that as far as the pension is concerned, the same having been paid, the relief which now deserves to be given to the petitioner was interest @ 18% per annum on the amount of pension which was admittedly unjustifiably withheld all these years by respondents 1-3. In support of the claim of interest @ 18% per annum, learned counsel for the petitioner placed reliance on one judgment of the Supreme Court in Vijay L. Mehrotra v. State of U.P. & Ors. (2001) 9 SCC 687 and some judgments of different High Courts which are reported as "Ramchandra D. Erande v. Union of India and Anr.", AIR 1997 Bom 129, "State of Rajasthan and Ors. V. B.L.Yadav", 2001(3) WLC 651 wherein interest @ 18% was awarded by the Courts for the delay in payment of post-retirement benefits to the concerned Government employees.

8. Because of the additional affidavit, referred to above, learned counsel for the respondents 1-3 had nothing to say regarding the claim of interest being made on behalf of the petitioner except that under the relevant Scheme of pension for delayed payment of pension only penal interest @ 12% per annum can be granted to the petitioner. In this regard he has drawn my attention to para No.17-A of the Employees Pension Scheme, 1995 which admittedly applies in the present case.

9. Counsel for the petitioner also submitted that the petitioner deserves to be compensated and this writ petition deserves to be allowed with exemplary costs against the respondents 1-3 for their having caused so much mental torture and agony to an old and ailing widow and who has been deprived of her legitimate dues of pension and in fact because of the delay caused in release of the monthly

pension the very purpose of such a Pension Scheme got frustrated because normally the dependants of a deceased employee who is a member of the pension scheme after his death depend upon the pension for survival. In the present case in particular, the petitioner was solely depending on the pension for her survival and despite the fact that she was finally given the pension amount in lump-sum for a period of four years she deserves to be duly compensated also by awarding to her reasonable compensation.

10. In my view, there is substance in the submissions of learned counsel for the petitioner. The additional affidavit, referred to above, filed on behalf of the respondents No.1-3 wherein very candidly it has been admitted by these respondents that the entire department was guilty of lack of initiative does call for grant of relief to the petitioner, as has been prayed for on her behalf by her counsel today.

11. This writ petition is accordingly allowed. The respondents are directed to pay to the petitioner penal interest @ 12 per cent per annum on the total amount of pension which was withheld unjustifiably by the respondent Nos.1-3, referred to already from the date the same become due till payment was actually made. The petitioner deserves to be compensated also by respondents 1-3 for the suffering which she must have undergone all these years at the hands of officials of respondents 1-3. The compensation is fixed at Rs.25,000/-. The respondents 1-3 shall also bear the costs of this writ petition, which are quantified at Rs.5,500/-. The respondents No.1-3 shall make the payments within two weeks from today.

NOVEMBER18, 2009
Nk

P.K.BHASIN,J