

Court No. - 7**Case :-** WRIT - A No. - 6879 of 2020**Petitioner :-** Rabindra Nath Pandey**Respondent :-** State Of U.P. Thru Prin.Secy. Co-Operative Lucknow And Ors.**Counsel for Petitioner :-** Shubham Tripathi, Anupama Bhadauria, Riya Ghosh**Counsel for Respondent :-** C.S.C., Nadeem Murtaza, Nishi Chaudhary, Rakesh Kumar Chaudhary**Hon'ble Abdul Moin, J.**

1. Heard Ms Anupama Bhadauria, learned counsel appearing for the petitioner, learned Standing Counsel and Shri Rakesh Kumar Chaudhary, learned counsel appearing for the respondents.

2. The instant writ petition has been filed praying for the following main reliefs:

"(a) issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing the impugned order dated 23.10.2018 passed by the respondent no. 4, contained in Annexure no.1 of this writ petition;

(b) issue a writ or certiorari or a writ, order or direction in the nature of certiorari quashing the impugned order dated 06.11.2018 passed by the respondent no. 4, contained in annexure no. 2 to this writ petition;

(c) issue a writ of certiorari or a writ, order or direction in the nature of certiorari setting aside the resolution dated 25.04.2013 of the respondent no. 3, contained in annexure no. 3 of this writ petition;

(d) issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the respondents to forthwith pay to the petitioner a sum of Rs. 6.50 lakhs as unpaid amount of gratuity, together with interest 10% per annum from 31.07.2015 to the date of actual payment;

(e) issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the respondents to forthwith pay to the petitioner the due payment towards his leave encashment;

(f) issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the respondents to forthwith pay to the petitioner the arrears of salary, together with interest of 10% per annum from the date of actual payment."

3. Bereft of unnecessary details, the contention of learned counsel for the petitioner is that despite the petitioner having retired from service on 31.07.2015 from the bank he has been paid less gratuity and less leave encashment on account of financial crunch being faced by the respondent bank.

4. The contention of learned counsel for the petitioner is that the respondents themselves have calculated the amount of gratuity payable to the petitioner as Rs 9,84,279/- as per noting, a copy of which is annexure 6 to the petition, which would be the amount payable to the petitioner under the provisions of Payment of Gratuity Act as is apparent from a perusal of the chart which is part of annexure 1 to the petition wherein, so far as the petitioner is concerned, the amount of gratuity payable to him under the provisions of Payment of Gratuity Act has been indicated.

5. The further contention of learned counsel for the petitioner is that despite the aforesaid amount of gratuity being admittedly due to the petitioner, he has only been paid an amount of Rs 3,50,000/- and even the leave encashment has been paid at a lesser amount.

6. By means of the order impugned dated 23.10.2018, which pertains to payment of gratuity and order dated 06.11.2018, which pertains to leave encashment, copies of which are annexure 1 and 2 to the petition, the respondent bank has indicated that lesser amount is being paid on account of financial crunch and a particular cut off date has been indicated as to payment of the gratuity at a higher amount and a lower amount of gratuity to those who have retired subsequent to the said date.

7. It is contended that once dues are payable to an employee, the same cannot be held back by the respondents, either by the state or a corporation,

citing financial crunch or shortage of funds as the same cannot be considered to be a valid defence of the state where it is bound to discharge duties which are statutory or constitutional.

8. Reliance has been placed on judgement of Hon'ble Apex Court in the case of **D S Nakara vs Union of India and others, 1983 SCC (1) 305** as well as a division bench judgement of this Court passed in **Special Appeal (defective) No. 10 of 2015 in re: Shiv Shankar Mishra vs State of U.P. and others decided on 15.01.2015.**

9. Another contention is that as the aforesaid amounts have still not been paid consequently directions be issued to the respondent bank to pay the aforesaid amount alongwith interest.

10. So far as payment of interest is concerned, reliance has been placed on a division bench judgement of this Court passed in **Special Appeal No. 532 of 2017 in re: Ramesh Chandra Mishra vs State of U.P. and others** decided on 25.04.2019 to argue that a division bench of this Court has held that in case of delayed payment of retiral dues, interest @9% per annum would be payable.

11. On the other hand, Shri Rakesh Kumar Chaudhary, learned counsel appearing for the respondent bank argues on the basis of averments contained in the counter affidavit that the respondent bank is running in heavy losses which has thus entailed lesser payment of gratuity to its employees by arriving at a cut off date. So far as payment of gratuity is concerned it is contended that all those employees who have retired subsequent to 31.08.2017 would be paid an amount of Rs 10 lakhs and those who retired prior to the said date would be paid an amount of Rs 3.5 lakhs as gratuity and consequently the petitioner has only been paid an amount of Rs 3.5 lakhs as gratuity. However, Shri Chaudhary does not dispute the calculation of gratuity payable to the petitioner as per the chart annexed with annexure 1 of the writ petition. So far as leave encashment is concerned Shri Chaudhary argues that a decision was taken in the meeting of the board that

on account of financial crunch, leave encashment would only be payable for one year of leaves and thus the leave encashment as admissible to the petitioner, only by counting one year of leaves, has been paid and consequently once the bank is running in losses as such there cannot be any occasion for payment of retiral dues in full as per the entitlement of the petitioner.

12. Shri Rakesh Kumar Chaudhary has stressed upon the details of losses facing the bank as per details indicated in paragraph 12 of the counter affidavit dated 11/12.1.2021.

13. Heard learned counsel for the parties and perused the record.

14. From perusal of record it emerges that the petitioner who was working as a Manager in the respondent bank retired on attaining the age of superannuation on 31.07.2015. He has only been paid gratuity of Rs 3.5 lakhs and leave encashment of only one year by taking 10 days leave countable for one year. The instant writ petition has been filed contending that the petitioner would be entitled for the entire amount of gratuity which the respondents themselves have indicated as Rs 9,84,279/- and that the leave encashment would also be payable as per rules and cannot be restricted to one year. The respondents have defended lesser payment of retiral dues i.e. the gratuity and leave encashment on the basis of the orders passed by them dated 23.10.2018 and 06.11.2018 by stating that on account of severe losses which the bank faces, it is not possible to make payment of entire retiral dues to its employees including the petitioner.

15. Whether lack of finances can be considered to be a reasonable ground for non payment of retiral dues to the employees is no longer res integra. This Court in the case of **Gajraj Singh vs State of U.P and others** passed in **Writ Petition No. 8015 (SS) 2021** decided on 18.08.2021 has held as under:

*"It is admitted on behalf of respondents that the date of retirement of the petitioner is on 31.01.2019 and admittedly the dues of gratuity and leave encashment have still not been paid to the petitioner till date. **The ground of financial difficulty***

being indicated by the corporation cannot be considered to be a valid ground to deny the lawful dues to which the petitioner, retired employee of the Corporation, is entitled as a matter of right. This aspect of the matter has been considered by this Court in the case of *Samal Chand Tiwari vs State of U.P. & others* reported in 2005 SCC OnLine All 1276 : (2006) 62 ALR 698 (All) : (2006) 109 FLR (Sum 12) 6 : (2006) 2 All LJ 45 : (2006) 4 LLJ (Supp) (NOC 114) 870 wherein this Court has held as under:

"4. After considering the rival submissions of the learned Counsel for the parties, I find that the defence of financial crisis on the part of the respondents is neither just nor a valid reason to deny the lawful dues to which a employee is entitled a matter of right.

5. In the case of *D.S. Nakara v. Union of India*, it has been held as follows:

"pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. (Para 20).

In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability, State obligation to provide security in old age, as escape from undeserved want was recognized and as a first steps pension was treated not only as a reward for past service but with a view to helping the employee to avoid destitution in old age. The *guid pro quo* was that when the employee was physically and mentally alert, he rendered not master the best, expecting him to look after him in the fall of life. A retirement system therefore exists solely for the purpose of providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal retirement receives the same amount. (Para 22).

Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. (Para 28).

Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure

of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. (Para 29)"

6. Thus, retiral benefits are not bounty but a right earned by the employee and thus it is deferred wages payable to a Government servant in lieu of considerable length of service rendered by an employee to the employer.

10. Similarly financial crunch or shortage of funds would not be a valid defence for the State where it is bound to discharge its duties which are statutory or constitutional is also the view taken by the Apex Court in the case of Secretary, Ministry of Chemicals and Fertilizers, Government of India v. Cipla Ltd. and the State of Gujarat v. Shri Ambica Mills Ltd., Ahmedabad In the present case, the petitioner has a fundamental right to earn livelihood under Article 21 of the Constitution of India which includes that after the retirement he is also entitled to receive his deferred wages in accordance with rules. Non-payment of retiral benefits, therefore, of the petitioner is violation of the petitioner's fundamental right under Article 21 of the Constitution of India."

Considering the aforesaid judgement in the case of Samal Chand Tiwari (Supra) it is apparent that the ground being taken by the respondents for withholding of the retiral dues of the petitioner i.e. financial difficulties cannot be considered to be a valid ground on which the respondents can withhold the retiral dues of the petitioner.

(emphasis by the Court)

16. Likewise a division bench of this Court in the case of **Shiv Shankar Mishra (supra)** has held as under:

*"The present case is an unfortunate instance where an employee has been left in the lurch after having rendered long years of service. Both the arrears on account of salary as well as pensionary dues have not been paid on time. When the appellant had moved a writ petition before the Court, an order was passed on 11 September 2013 directing the payment of the admitted arrears within four months and for immediate steps to determine the pensionary dues. This order was not complied with following which, he was constrained to file contempt proceedings. It is only thereafter that on 18 March 2014 the payment of arrears of salary from August 2010 until February 2013 was made. It was only then that the appellant was also paid arrears on account of gratuity, pension and other retiral dues. There was no reason or justification to withhold the payment of salary during the period when the appellant had worked when salary fell due for payment or for the non payment of pensionary and retiral dues, the latter within a reasonable period of retirement. There was no lapse on the part of the appellant. **The paucity of funds cannot surely be held up as an excuse not to pay the salary of an employee who had worked for the period for which his salary is due.** Similarly, pensionary dues constitute a rightful entitlement of an employee. The State cannot be heard to say that it would fail to pay the pension on time and yet excuse itself from the liability to pay interest.*

In the case of State of Kerala Vs M Padmanabhan Nair and Som Prakash¹, the Supreme Court held as follows:

"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."

(emphasis by the Court)

17. Upon perusal of the aforesaid judgements including the judgement of Hon'ble Supreme Court in the case of **D S Nakara (supra)** it clearly emerges that where the dues are payable to an employee then the state or the corporation which is duty bound to discharge its duties which are statutory

or constitutional cannot take a plea of lack of finances for payment of dues which are admittedly due.

18. Accordingly considering the aforesaid judgements the Court does not find that the reasons given by the respondents of the bank facing financial crunch is a valid ground for non payment or lesser payment of retiral dues to petitioner in accordance with law.

19. The next question which emerges is as to whether for late payment of retiral dues, the petitioner would be entitled for interest.

20. The aforesaid issue is also no longer res integra keeping in view the division bench judgement of this court in the case of **Ramesh Chandra Mishra (Supra)** wherein this Court has held as under:

"6. In the matter of retiral benefits, if the same are withheld unreasonably or illegally for the reasons not attributable to employee, then Court has power to award compensatory interest and penal interest to employee in appropriate cases.

7. It is now well settled that retiral dues and pension are not bounty but deferred wages earned by an employee after a long service. After retirement, retiral dues must be paid to employee concerned within a month unless there is any valid justification or reason which is not in the case in hand.

8. Repeatedly it has been held that whenever retiral dues of an employee are paid belatedly, without any valid justification, the same should be paid with interest. Interest on delayed payment on retiral dues has been upheld time and again in a catena of decisions. This Court in Shamal Chand Tiwari Vs. State of U.P. & Ors. (Writ Petition No.34804 of 2004) decided on 06.12.2005 held:

"Now the question comes about entitlement of the petitioner for interest on delayed payment of retiral benefits. Since the date of retirement is known to the respondents well in advance, there is no reason for them not to make arrangement for payment of retiral benefits to the petitioner well in advance so that as soon as the employee retires, his retiral benefits are paid on the date of retirement or within reasonable time thereafter. Inaction and inordinate delay in payment of retiral benefits is nothing but

culpable delay warranting liability of interest on such dues. In the case of State of Kerala and others Vs. M. Padmnabhan Nair, 1985 (1) SLR-750, the Hon'ble Supreme Court has held as follows:

"Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following months. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasized and it would not be unreasonable to direct that the liability to pay interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

In this view of the matter, this Court is of the view that the claim of the petitioner for interest on the delayed payment of retiral benefits has to be sustained."

9. The above exposition of law has been reiterated in O.P. Gupta Vs. Union of India and others (1987) 4 SCC 328, R. Kapur Vs. Director of Inspection (1994) 6 SCC 589, S.R. Bhanrate Vs. Union of India and others AIR 1997 SC 27, Dr. Uma Agarwal Vs. State of U.P. & another (1999) 3 SCC 438 and S.K. Dua Vs. State of Haryana and another (2008) 3 SCC 44.

10. A Division Bench of this Court has also considered the question of award of interest on delayed payment of retiral benefits recently in Rajeshwar Swarup Gupta Vs. State of U.P. & others 2011 (2) ADJ 608 and, relying on Apex Court decision in Kerala and others Vs. M. Padmnabhan Nair, 1985 (1) SLR 750 and its several follow ups as also an earlier Division Bench judgment of this Court in Smt. Kavita Kumar Vs. State of U.P. & others (2008) 119 FLR 787, has awarded 12% interest in the said case.

11. In the matter of delayed payment of arrears of salary an issue was raised whether in absence of any provision for payment of interest, such interest is payable or not and this

issues was answered in positive in favour of employee and when matter went to Supreme Court, in *Union of India and others Vs. Dr. J.K. Goel* 1995 Supp. (3) SCC 161 Supreme Court held that if the facts show that illegally amount payable to employee has not been paid and employee is not responsible, then interest can be awarded.

12. In view of above discussion, the appeal is partly allowed to the extent that judgment of learned Single Judge dated 31.08.2017 impugned herein is modified directing that respondents shall pay interest on delayed payment of gratuity at the rate of nine per cent per annum which shall be computed from the date after one month from the date of retirement till actual payment."

21. Likewise a division bench of this court in the case of **Shiv Shankar Mishra (supra)** with regard to payment of interest has held as under:

"In a more recent decision in *D D Tewari Vs Uttar Haryana Bijli Vitran Nigam Ltd*², the Supreme Court observed that any culpable delay in settlement and disbursement thereof is to be visited with penalty of payment of interest. Hence, interest @ 9% on delayed payment was awarded to be paid within six weeks failing which interest @ 18% p.a. would need to be paid. An erroneous withholding of gratuity amount to which the employee is legally entitled, entails penalty on the delayed payment.

We, therefore, have come to the conclusion that the learned Single Judge was not justified in declining the prayer for the payment of interest. Insofar as the payment which was made to the appellant on 18 March 2014 is concerned, the appellant was clearly entitled to the payment of interest from the date of the filing of the writ petition in 2010 (Writ -A No. 47141 of 2010). The appellant would also be entitled to the payment of interest on the pensionary payment which was unlawfully withheld from March 2014 until actual payment is made. We direct that interest shall be admissible to the appellant at the rate of 9% per annum from the date on which the respective payments on account of arrears of salary, or as the case may be, towards pensionary dues became due and payable as directed earlier. Interest shall be computed in terms of the aforesaid directions within a period of three months from the

date of receipt of a certified copy of this order. The order of the learned Single Judge declining interest shall to that extent stand set aside and be substituted by the aforesaid directions."

(emphasis by the Court)

22. From perusal of judgements of division bench of this Court in the case of **Ramesh Chandra Mishra (Supra)** as well as **Shiv Shankar Mishra (supra)** it emerges that this Court has held, after placing reliance on catena of judgements, that in case of delayed payment of retiral dues, payment of interest is the norm.

23. In this case, the only reason which emerges for non payment of full retiral dues to the petitioner is lack of finance / financial losses being suffered by the bank which, as already indicated above, cannot be considered to be a valid ground for non payment of retiral dues. Thus the natural corollary to it is that as the entire retiral dues have still not been paid to the petitioner consequently the petitioner would be entitled for payment of interest which keeping in view the judgement of this Court in the case of **Ramesh Chandra Mishra (Supra)** and **Shiv Shankar Mishra (supra)** should be 9% per annum but keeping in view the GPF rate, the Court quantifies the interest payable at 7.1% per annum.

24. Keeping in view the aforesaid discussion the writ petition is **allowed**. The orders impugned dated 23.10.2018 and 06.11.2018, copies of which are annexures 1 and 2 to the petition, are quashed. The respondents are directed to pay the entire withheld amount of gratuity and leave encashment to the petitioner as per rules within a period of three months from the date of receipt of a certified copy of this order.

25. While making the payment of retiral dues the respondents shall also pay interest @ 7.1% to the petitioner from the date the retiral dues fell due i.e. 31.07.2015 till the date the actual payment is made to the petitioner.

26. So far as the prayer for payment of salary is concerned it is open for the petitioner to submit a detailed representation to the respondents within a period of four weeks from today.

27. In case such a representation is made then the competent authority shall consider release of arrears of salary, if due to the petitioner, within next four weeks in accordance with law and relevant rules.

Order Date :- 30.11.2023

J.K. Dinkar