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HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (S) No. 5256 of 2016**

Shyam Dev, son of Mansai, husband of late Silbina Lakra, aged about 68 years, resident of Village-Kamalpur, Tahsil-Kusmi, District Balrampur-Ramanujganj (C.G.)

---- **Petitioner****Versus**

1. State of Chhattisgarh, Through Secretary, Health & Family Welfare Department, Mantralaya, Mahanadi Bhawan, New Raipur, Distt. Raipur (C.G.)
2. The Director, Health Services, Raipur, District Raipur (C.G.)
3. The Chief Medical & Health Officer, District Chikitsalaya, Ambikapur, District Surguja (C.G.)
4. The Block Medical Officer, Kusmi, District Balrampur-Ramanujganj (C.G.)
5. The Accountant General, Chhattisgarh, Raipur (C.G.)
6. The Joint Director, Treasury, Accounts & Pension, Bilaspur (C.G.)

---- **Respondents**

For Petitioner
Advocate.

: Mr. G.P. Vishwakarma,

For Respondents No.1 to 4 & 6 : Mr. Dhiraj Kumar Wankhede, GA
For Respondent No. 5 : Mr. Raj Kumar Gupta, Advocate.

Dr. N.K. Pandey, Chief Medical & Health Officer, Ambikapur
Mr. A.K. Pandey, Joint Director, Treasury, Accounts & Pension,
Bilaspur are present in person.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board**

17/02/2017

(1) “In case of an employee retiring after having rendered the services, it is expected that all the payments of retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payment could not be made on the date of retirement”

(2) The afore-stated mandate of the Supreme Court rendered in the matter of ***Vijay L. Mehrotra Vs. State of U.P. & others***¹ has been observed by the authorities of the State Government in the present case in its breach. In the instant case most of the payment of retrial benefits were paid to petitioner long after the petitioner's wife, who was government servant died on 7.2.1999 and even the amount of General Provident Fund has not been paid yet.

(3) The Essential facts to demonstrate the above-stated callousness on the part of the State Authorities in making payment of retiral dues to the petitioner are as under:-

(i) Smt. Silbina Lakra (petitioner's wife) was appointed as Auxiliary Nurse Midwifery in the Community Health Centre on 21.11.1968. She suffered paralytic attack and ultimately died on 7.2.1999 and on account of paralysis she could not attend her duties from 31.07.1991 to 07.02.1999.

(ii) After death of Smt Silbina Lakra, the petitioner made an application for grant of admissible retiral benefits and also made an application for grant of earned leave to her from 31.07.1991 to 07.02.1999 (period of absence).

1 (2001) 9 SCC 687

(iii) The said application was sent to respondent No. 6- Joint Director, Treasury, Accounts & Pension, Bilaspur for necessary action, which was returned by respondent No. 6 on 11.10.1999 and, thereafter, again matter was sent by respondent No. 3 – the Chief Medical & Health Officer, Ambikapur to respondent No. 6 stating that period of absence be treated as *dies non*. Again the respondent No. 6 by its letter dated 9.4.2001 raised an objection that the authority for declaring the period of absence as *dies non* vests in the Director, Health Services, therefore, period from 31.7.1991 to 7.2.1999 be declared *dies non* by appropriate competent authority.

(iv) The aforesaid request of Chief Medical & Health Officer was made to the Director, Health Services, Raipur on 9.5.2001. Again the same request were reiterated on 24.09.2004, 17.07.2006 & 17.08.2006 but the Director, Health Services did not take cognizance on the said request (s) and matter remained pending with the Director, Health Services, respondent No. 2 herein with no decision on the matter.

(4) Feeling unhappy with the non-grant of pension & other retiral benefits, the petitioner herein filed a writ petition being Writ Petition (S) No.2170/2011 before this Court for directing the State Government to disburse the retiral benefits to the petitioner and for direction to the Director (Health Services) to decide his matter regarding non-payment of retiral dues and to fix provisional pension. That writ petition was disposed of by this Court on 26th April, 2011 on the undertaking of the State Government that the decision would be taken resolving the dispute regarding

petitioner's retiral benefits within a period of eight weeks in accordance with law.

(5) Pursuant to the order of this Court dated 26.04.2011, the respondent No. 2 – Director, Health Services, Raipur by its order dated 27.07.2011, declared the period of absence of petitioner's wife as *dies non*. Thereafter, the Joint Director, Treasury, Accounts & Pension, Ambikapur, by its order dated 28.10.2011 passed an order granting monthly pension & death-cum-retirement gratuity to the petitioner and, thereafter some payments were also made. The details of the payments made towards retiral dues to the petitioner till this date are as under:-

Sr. No.	Particulars	Amount paid	Date
1.	Monthly Pension	Rs.1,973 + D.A.	28.10.2011
2.	Death-cum-retirement gratuity	Rs.24,768/-	28.10.2011
3.	Leave encashment	Rs.14,304/-	15.07.2014
4.	Family Welfare Fund	Rs.9,101/-	03.02.2017
5.	General Insurance Scheme	Rs.17,995/-	03.02.2017
6.	Group Insurance	Rs.1,00,000/-	03.02.2017
7.	GPF amount	Nil	Nil Proposal was sent on 7.1.2017 to Accountant General

(6) Grant of retirement benefits including pension, death-cum-

retirement gratuity, and family pension to the government servant are governed by the Chhattisgarh Civil Services (Pension) Rules, 1976 (hereinafter called as “ the Rules of 1976). Rule 43 of the Rules of 1976 provides for amount of pension. Rule 44 of the Rules of 1976 provides for death-cum-retirement gratuity to a government servant. Rule 47 provides for contributory family pension. Rule 48 provides for non-contributory family pension to a government servant.

(6.1) Chapter-VIII of the Rules of 1976 deals with application for and sanction of pension. Rule 49, Rule 57, Rule, 58 Rule 59, Rule 60, Rule 61 and Rule 63 provide for government servant due for retirement.

(6.2) A studied perusal of the aforesaid Rules would show that it is statutory duty of every head of the department/head of the office to prepare a list in every six months *i.e.* on the 1st January and 1st July, each year the list of all gazetted and non-gazetted government servants who are due to retire under his order within next 24 to 30 months of that day and thereafter send the copies to the officers mentioned in sub-rules (2) & (4) of Rule 49 of Rules of 1976 for necessary verification. Rule 57(1) of the Rules of 1976 obliges the head of office to undertake the work of preparing pension papers in Form-VI two years before the date on which a government servant is due to retire on superannuation. By virtue

of Rule 58 the head of office shall verify the service records of the government servant and further undertake the formalities mentioned in sub-rules (2) & (3) and thereafter on completion of 13 months before the date of retirement, the head of office shall take up the actual work of preparation of pension papers in Part-I and Part-II of Form-VI and thereafter the head of office shall send Form-VI to the audit officer twelve months before the date of retirement with a covering memo in Form-VII along with service book, service roll duly completed and up to date under Rule 59 of the Rules of 1976. Thereafter the head of office has to take steps for sanction and disbursement of anticipatory pension and gratuity as provided in Rule 61 of the Rules of 1976. Under Rule 63, on receipt of pension papers as provided in Rule 59 the audit officer shall apply the requisite checks and assess the amount of final pension and gratuity not later than two months in advance of the date of retirement and if the audit officer is unable to assess the amount aforesaid, he shall communicate the fact to the head of office. Thus, the payment of pension shall be effective from the date the government servant ceased to be born on establishment, and as such the government servant retiring is entitled to get the amount of pension from the date of his or her superannuation.

(6.3) The rules also prescribe procedure for recovery and adjustment of the government dues. Rule 65 (1) provides that it shall be the duty of every retiring government servant to clear all

government dues before the date of retirement and procedure for recovery of the said dues has been given in sub-rule (2) of Rule 65. Thus, Rule 66 clearly provides that if the retiring government servant furnishes surety as prescribed in Rule 66(1) (a) the grant of pension and gratuity shall not be delayed.

(6.4) Likewise, Chapter-IX of the Rules provides for sanction of family pension and death-cum-retirement gratuity in respect of government servant dying while in service. Detail procedure has been prescribed in Rules 69 and 70 of the Rules of 1976 for payment of retiral dues. The said rules which are applicable to the present case are as under:-

“69. [Payment of family pension and anticipatory family pension and death-cum-retirement gratuity when a Government servant dies when in service]- Where the Head of Office has received an intimation about the death of a Government servant while in service, he shall ascertain whether any death-cum-retirement gratuity or family pension or both is or are payable in respect of the deceased Government servant.

(2) (a) Where the death-cum-retirement gratuity under Rule 44, is payable the Head of Office shall ascertain :-

(i) If the deceased Government servant had nominated any person or persons to receive the gratuity; and

(ii) Where the deceased Government servant had not made any nomination or the nomination made does not subsist, the person or persons to whom the gratuity may be payable.

(b) The Head of Office shall, then address the person concerned if Form 9 or Form 10 as may be

appropriate who may submit a claim in Form 11.

(3) Where the family of the deceased Government servant is eligible for the contributory family pension under Rule 47,-

(a) the Head of Office shall address the widow or widower in Form 12 for making a claim in Form 13; and

(b) Where the deceased Government servant is survived only by child or children, the guardian of such child or children may submit a claim in Form 13 to the Head of Office:

Provided that the guardian shall not be required to submit a claim in the said Form on behalf of the unmarried daughter if she has attained the age of eighteen years and such daughter may herself submit a claim in the said Form 13.

(4) (a) Where the family of the deceased Government servant is eligible for non-contributory family pension under Rule 48 of the Head of Office shall ascertain,-

(i) if the deceased Government servant had nominated any member of his family to receive the payment of non-contributory family pension; and

(ii) where the deceased Government servant had not made any nomination or the nomination made does not subsist, the person to whom the non-contributory family pension may be payable.

(b) The Head of Office shall, then, address the person concerned in Form 14 or Form 15 as may be appropriate for making a claim in Form 16.

(5) The Head of Office shall furnish to the Audit Officer the following particulars regarding the details of Government dues outstanding against the deceased Government servant namely:-

(a) Government dues recoverable out of the gratuity before payment is authorised, that is to say :-

(i) contribution towards contributory family pension, if applicable;

(ii) Government dues which have been ascertained and assessed;

(b) Amount of gratuity to be held over the adjustment of Government dues which have not been assessed so far.

Note.- The amount of gratuity to be held over shall be determined in accordance with the provisions of clauses (b) and (c) of sub-rule (2) of Rule 66.

[(a)] After completing Form 17 the Head of Office shall send that Form in original to the Audit Officer with a covering letter in Form 18 alongwith the Government servant's service book/service roll, duly completed upto date and any other documents relied upon for the verification of the service claimed in such a manner that they can be conveniently consulted.

[(b)] The Head of office shall retain one copy of the aforesaid Form for his office record.

[(c)] If the payment is desired in another circle of audit, Form 17 shall be sent in duplicate to the Audit Officer.

(7) After the documents referred to in sub-rules (5) and (6) have been sent to the Audit Officer concerned, the Head of Office shall draw anticipatory family pension not exceeding the maximum family pension and 90% of the gratuity as indicated in Part I of Form 17 and for this purpose adopt the following procedure namely:-

(a) he shall issue a sanction letter in favour of the claimant or claimants endorsing a copy thereof to the Audit Officer indicating the amount of anticipatory family pension and 90% of the gratuity payable under these rules;

(b) he shall indicate in the sanction letter the amount recoverable out of the gratuity under sub-rule (5);

(c) after issue of the sanction letter, he shall draw-

(i) the amount of anticipatory pension;

and

(ii) the amount of 90% of the gratuity after deducting therefrom the dues mentioned in clause (b);

from the Treasury at which the pay and allowances of the establishment are drawn by him.

(8) The Head of Office *shall disburse the anticipatory family pension and gratuity to the claimant or claimants on or after the first day of the month following the month in which the Government servant died, if final P.P.O./G.P.O. is not received by that time.*

(9) The Head of Office shall inform the Audit Officer as soon as the gratuity has been paid to the claimant or claimants with all details of the amount recovered from such gratuity.

(10) If the claimant desires the payment of anticipatory family pension or of gratuity or of both through money order the same shall be remitted to him through money order at the cost of State Government, if the amount is Rs.100 or less.

70. Authorisation of final family pension and balance of gratuity in respect of a deceased non-gazetted Government servant referred to in Rule 69.- (1) On receipt of the documents referred to in sub-rules (5) and (6) of Rule 69 the Audit Officer shall within a period of six months from the date of death of the Government servant, apply the requisite checks, record his audit enforcement on Section 1 of Part IV of Form 17 and assess the amount of final family pension and gratuity:

Provided that if the Audit Officer is, for any reason, unable to assess the amount within the period aforesaid, he shall communicate the fact to the Head of Office.

(2)(a) If the family pension is payable in his circle of audit, the Audit Officer shall prepare the Pension Payment Order.

(b) The payment of family pension shall be effective from the date following the date on which the Government servant died.

(c) Amount of anticipatory family pension, if any, in respect of the period for which family pension was drawn and disbursed by the Head of Office shall be intimated by the Head of Office to the Treasury Officer concerned and adjusted by him from the final payment of such family pension.

(3)(a) The Audit Officer shall authorise the payment of the gratuity after adjusting the amount, if any, outstanding against the deceased Government servant including the amount of gratuity paid by Head of Office as anticipatory gratuity.

(b) The amount of gratuity held over under sub-rule (5) of Rule 69 shall be adjusted by the Audit Officer against the Government dues ascertained and assessed subsequently and the balance, if any, shall be released to the claimant or claimants after the expiry of the period referred to in clause (a) of sub-rule (3) of Rule 66.

(c) If the gratuity is payable in his circle of audit the Audit Officer shall prepare and issue order for its payment.

(4) The fact of the issue of the Pension Payment Order and order for payment of the gratuity shall be promptly reported to the claimant and Head of Office and the documents which are no longer required shall be returned to him.

(5) The Audit Officer may authorise the payment of gratuity even during the period of the currency of anticipatory family pension:

Provided that the amount of gratuity has been finally assessed and no recovery of Government dues is outstanding against the deceased Government servant.

(6) If the final family pension and the gratuity are payable in another circle of audit, the Audit Officer shall send a copy of Form 17 along with the audit encasement and last pay certificate, if received, to the Audit Officer of that circle who shall prepare Pension Payment Order and order for the payment of gratuity:

Provided that the adjustment of anticipatory family pension and gratuity drawn and disbursed by

the Head of Office shall be made by the Audit Officer in whose circle the provisional payments were made.

(7) If the amount of anticipatory family pension drawn and disbursed by the Head of Office is found to be in excess of the final family pension assessed by the Audit Officer, it shall be open to the Audit Officer to adjust the excess amount of the gratuity, if any, or recover the excess amount by short payments of family pension payable in future.

(8) If the amount of gratuity disbursed by the Head of Office proves to be large than the amount finally assessed by the Audit Officer, the gratuitant shall not be required to refund the excess.”

(7) After having a brief survey of the Rules governing grant of retiral benefits to the retired government servant and to the legal representatives of deceased government servant which clearly prescribe the time limit for disbursement of retiral benefits, it would be appropriate to notice the relevant judgments of the Supreme Court holding that right to receive pension is recognized as a right to property within the meaning of Article 300A of the Constitution of India.

(7.1) The Constitution Bench of the Supreme Court in the matter of **Deokinandan Prasad v. The State of Bihar and others**² has held that right to receive pension was property under Article 31(1) and Article 19(1)(f) of the Constitution of India and it was held as under:-

“27. The last question to be considered, is, whether the right to receive pension by a government servant is

2 (1971) 2 SCC 330

property, so as to attract Articles 19(1)(f) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same.

33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order, dated June 12, 1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable.....”

(7.2) Thereafter, the Supreme Court in the matter of **D. S. Nakara & others v. Union of India**³ reiterating the law laid down in **Deokinandan Prasad**(supra) held as under:-

“28. 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. However, as held in *Douge v. Board of Education* [302 US 74 : 83 L Ed 57] a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living.....

29.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.....”

(7.3) Similar is the proposition laid down in **Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. and others**⁴ in which their Lordships after taking note of **Deokinandan Prasad** (supra) and

3 (1983) 1 SCC 305

4 (1984) 3 SCC 369

D. S. Nakara (supra) held that pension is a right and payment of it doesn't depend upon the discretion of the employer nor it can be denied at the sweet will or fancy of the employer.

(7.4) A three-judge Bench of the Supreme Court in the matter of **State of West Bengal v. Harish C. Banerjee and others**⁵ relying on **Deokinandan Prasad** (supra) and **D. S. Nakara** (supra) clearly held that right to receive pension is a valuable right of the government servant which doesn't depend upon the sweet will and pleasure of the government and succinctly held as under:-

“4. Pension is not a bounty payable on the sweet will and the pleasure of the Government and to receive pension is a valuable right of a government servant is a well-settled legal proposition. The question in the present case, however, is not about the deprivation of the said right by the Government by an executive order but is about the constitutional validity of Rule 10(1) providing for withholding of pension or part thereof in certain cases.

5. Articles 19(1)(f) and 31(1) have been repealed by the Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. 20-6-1979. The right to property is no longer a fundamental right. It is now a constitutional right, as provided in Article 300-A of the Constitution. Right to receive pension was a fundamental right at the time of framing of the Rules in 1971. The question is whether a rule framed under proviso to Article 309 of the Constitution providing for withholding of the pension would ipso facto be ultra vires, being violative of Article 19(1)(f) as it stood in 1971 when the Rules were framed.”

(7.5) In **Pepsu Road Transport Corporation, Patiala v. Mangal Singh and others**⁶, the Supreme Court has considered the nature and object of pension and held as under:-

5 (2006) 7 SCC 651

6 (2011) 11 SCC 702

“34. Pension is a retirement benefit partaking of the character of regular payment to a person in consideration of the past services rendered by him. We hasten to add that although pension is not a bounty but is claimable as a matter of right, yet the right is not absolute or unconditional. The person claiming pension must establish his entitlement to such pension in law.....

39. Pension is a periodic payment of an amount to the employee, after his retirement from service by his employer till his death. In some cases, it is also payable to the dependants of the deceased employee as a family pension. Pension is in a nature of right which an employee has earned by rendering long service to the employer. It is a deferred payment of compensation for past service. It is dependable on the condition of rendering of service by the employee for a certain fixed period of time with decent behaviour. Like CPF, the object of providing pensionary benefit under the Pension Scheme is to provide social security to the employee and his family after his retirement from the service. The Government's/employer's obligation under the Pension Scheme begins only when the employee retires and it continues till the death of the employee.

49.Pension is not a charity or bounty nor is it a conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long and satisfactory service. It is in the nature of deferred payment for the past services. It is a social security plan consistent with the socio-economic requirements of the Constitution when the employer is State within the meaning of Article 12 of the Constitution rendering social justice to a superannuated government servant. It is a right attached to the office and cannot be arbitrarily denied.”

(7.6) In the matter of **State of Jharkhand v. Jitendra Kumar Shrivastava and another**⁷, it has been held by their Lordships of the Supreme Court that gratuity and pension are not bounty and it is thus a hard earned benefit which accrues to an employee and

7 (2013) 12 SCC 210

is in the nature of property. This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India. It has been held following the decisions of the Supreme Court in the matter of **Deokinandan Prasad** (supra) and **D. S. Nakara** (supra). The report states as under:-

“It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. Conceptually it is so lucidly described in D. S. Nakara (supra) by *Justice D. A. Desai*, who spoke for the Bench, in his inimitable style, in the following words:

18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar (supra) wherein this Court authoritatively ruled that 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 anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh⁸

It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.

14. The right to receive pension was recognized as a right to property by the Constitution Bench judgment of this Court in Deokinandan Prasad v. State of Bihar (supra)."

(7.7) Very recently, in the matter of **State of Himanchal Pradesh & others v. Rajesh Chander Sood & others**⁹, their Lordships of the Supreme Court referred the judgment of **Deokinandan Prasad** (supra) and **D. S. Nakara** (supra) with approval.

(7.8) In a very recently delivered judgment by the Supreme Court in the matter of **State of Uttar Pradesh & others Vs. Dhirendra Pal Singh**¹⁰ following the principle of law laid down in **State of Kerala and others Vs. M. Padmanabhan Nair**¹¹, it has been held that culpable delay in disbursement of payment of gratuity must be visited with penalty of payment of interest.

8 (1976) 2 SCC 1

9 (2016) 10 SCC 77

10 (2017) 1 SCC 49

11 (1985) 1 SCC 429

(8) Thus, from the above-stated binding judgments of the Supreme Court, it is luminously clear that a person cannot be deprived of pension without authority of law as it is property within the meaning of Article 300 of the Constitution of India and, therefore, deprivation of the same is clearly untenable and without authority of law.

(9) Not only this, the Supreme Court in the matter of ***M. Padmanabhan Nair (supra)*** has clearly held that 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 decision of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with penalty of payment of interest at the current market rate till actual payment and granted 6% interest per annum as claimed by the petitioner therein.

(10) The above stated judgment rendered in the matter of **State of Kerala and others (supra)** has been followed with approval by the Supreme Court in the matter of **D.D. Tewari (dead) through Legal representatives Vs. Uttar Haryana Bijli Vitran Nigam Limited and others**¹², in which their Lordships of the Supreme Court have awarded 9% interest per annum and further directed that if the amount is not paid within the stipulated period, then the same shall carry interest at the rate of 18% per annum from the

¹² (2014) 8 SCC 894

date when the amount falls due to the deceased.

(11) As noticed in opening paragraph of this order, the Supreme Court in the matter of **Vijay L. Mehrotra** (supra) clearly held that all the payments of retiral dues should be paid on the date of retirement or immediately thereafter and finding no justification for delay in making payments awarded simple interest at the rate of 18% per annum with effect from date of her retirement till date of actual payment.

(12) Applying the principle of law laid down by the Supreme Court in the above-referred cases to the facts of the present case, it is quite vivid that the petitioner's wife died on 7.2.1999 and immediately after her death, petitioner (husband of the deceased government servant) moved an application declaring the absence period as *dies-non* and for grant of admissible retiral benefits. Firstly, the Joint Director, Pension did not take any prompt step for declaring the absence period as *dies non* and made objection one after the other, and the said application was ultimately forwarded to the Director, Health Services, Raipur on 9.5.2001 for declaring the said period as *dies non* but the Director, Health Services sitting tight over the matter did not take decision on the said application promptly till the order was passed in the writ petition filed by the petitioner on 26.04.2011 by this Court, then only on 27.07.2011 the Director, Health Services declared the period of absence of deceased government servant as *dies non* and,

thereafter, the Joint Director, Pension granted the amount of pension and death-cum-retirement gratuity on 28.10.2011. Once the period of absence is declared dies non, the Chief Medical & Health Officer, Ambikapur and Block Medical Officer, Kusmi, District Balrampur should have taken prompt steps to pay all retiral benefits admissible such as leave encashment, family welfare fund, General Insurance Scheme and Group insurance, but the Chief Medical & Health Officer, Ambikapur/Block Medical Officer, Kusmi remained happy by granting an amount of leave encashment on 15.07.2014. The other admissible dues such as Family Welfare Fund, General Insurance and Group Insurance were paid to the petitioner as late as on 3.2.2017 when this Court in present writ petition on 30.01.2017 directed the personal presence of respondents No. 3 & 6 and fixed the case for hearing on 17.02.2017; whereas proposal for releasing the amount of GPF in favour of petitioner was made to the Accountant General only after on 7.1.2017 when this Court directed for filing of the return in this writ petition. It appears from the return filed in this petition that the office of Accountant General has made request to the Block Medical Officer, Kusmi, District Balrampur for sending the case of petitioner for grant of amount of General Provident Fund, then only the proposal was made on 7.1.2017 by Block Medical Officer to the Accountant General for grant of pension to the petitioner.

(13) The aforesaid sequence of events would show that there is complete callousness and indifferent attitude firstly on the part of Director, Health Services, Raipur, who took more than 11 years in declaring the absence period of deceased government servant as *dies non*, that too, pursuant to the order of this Court in writ petition filed by petitioner. Secondly, the Chief Medical & Health Officer, Ambikaur and Block Medical Officer, Kusumi, District Balrampur did not take prompt steps even after declaring the absence period as *dies non* on 27.07.2011 by Director (Health Services) and only an amount of leave encashment was paid by Block Medical Officer, Kusumi as late as on 15.7.2014. The amount of Family Welfare Fund, General Insurance Scheme & Group Insurance was paid only when personal presence of respondents No. 3 & 6 was directed by this Court on 17.02.2017 and the Block Medical Officer has already stated that proposal for GPF was made only on 7.1.2017 pursuant to the order of Accountant General and there is complete violation of Rules of 1976 in making payment of retiral dues to the petitioner particularly breach of Rule 69(8) of the Rules of 1976. .

(14) In the considered opinion of this Court, it is a complete callousness and the culpable delay on the part of Director, Health Services, Raipur, Chief Medical & Health Officer, Ambikapur and Block Medical Officer, Kusmi, District Balrampur, Ramanujganj, in making payment of retiral dues to the petitioner and further taking

into account that such a lapse on the part of the Authorities of the State Government is a regular phenomenon, giving feeling of insecurity in the mind of the government servant in getting their retiral dues right in time and to avoid the culpable delay in making the payment of retiral dues, this writ petition is disposed of with the following directions:-

(i) That, the Accountant General shall take a decision on the petitioner's case for grant of GPF within six weeks as the proposal for grant of GPF has already been sent by the Block Medical Officer, Kusumi, District Balrampur to him on 7-1-2017 and be paid at the earliest.

(ii) That, the petitioner will be entitled for interest @ 8% from the respondents on the delayed payment of pension and gratuity amount from the date of entitlement of such retiral dues till the date of actual payment. The amount be paid within a period of six weeks, failing which, it will carry interest @ 10% per annum. The petitioner will also be entitled for cost of Rs.25,000/- from the Director, Health Services as petitioner was required to file two writ petitions for disbursement of retiral dues and incurred huge expenses in prosecuting these writ petitions and suffered harassment & trauma. The State Government is at liberty to consider whether erring official should or should not be directed to compensate the government or loss sustained by it by his

culpable lapses, such action if taken would help generate in the officials of the State Government a sense of duty towards the Government under whom they serve as also a sense of accountability to members of the public as mandated by Supreme Court in the matter of **State of Kerala Vs. M. Padmnabhan Nair** (supra).

(iii) The Chief Secretary, Govt of Chhattisgarh is directed to constitute a committee with consultation of Principal Secretary, GAD in each of its government departments to be presided by an officer not below the rank of Secretary with Head of the Department and Director (Pension) & Director (Local Audit Fund) as its members within two weeks from the date of receipt of this order to ensure the strict compliance of provisions contained in the Chhattisgarh Civil Services Pension Rules, 1976 relating to disbursement of retiral benefits and to ensure that process for timely payment of retiral dues is initiated well in advance and retiral benefits be paid to retiring government employee on the date of retirement itself as per rules and/or to the legal representatives of the deceased government servant as per Rule 69 (8) of the Rules of 1968, keeping in view the mandate of the Supreme Court in the matter of **Vijay L. Mehrotra** (Supra), in which it has been expected by their Lordships that retiral dues should be paid to the

Government servant on the date of his retirement, except in case in which for unforeseen circumstances it cannot be paid. The said Committee shall ensure the strict compliance of the Rules of 1976 by holding meetings monthly and, thereafter, every month's report be sent to Chief Secretary the result of meeting & difficulty, if any, in disbursement of retiral dues to retiring Government Servant and in turn, Chief Secretary will consider their reports and give necessary direction in that behalf and monitor cases by holding meeting of the said committee quarterly and to ensure that files of retiring government servants relating to retiral benefits should not be kept pending at any level undecided and be paid well in time. The Chief Secretary, Government of Chhattisgarh will submit action taken report after three months to this Court.

(iv) A copy of this order be sent to the Chief Secretary, Govt. of Chhattisgarh and also to Principal Secretary, GAD for information and needful. The Principal Secretary, GAD is directed to convey a copy of this order to all District Collectors, who in turn, in Time Limit meeting bring into the notice of all responsible officers entrusted with the duty of dealing with/clearing the file of retiral dues of retiring government servant and to ensure due compliance of this order and Rules of 1976. The Principal Secretary, GAD is

further directed to send a copy to the Commissioner (Revenue) of all the Revenue Divisions and Commissioner in turn, quarterly review the cases relating to retiring government servant in presence of the Collector (s) of the concerned Revenue Division to ensure the compliance of the Rules of 1996 and payment of retiral dues to retiring government servant right in time.

(v) A copy of this order be sent directly to Director (Pension) & Director (Local Audit Fund), who in turn circulate it among all its Joint Director (Pension) & (Local Audit Fund) of all the Districts to ensure that the files relating to retiral dues be cleared by their respective Joint Director (s) right in time as per rules and should not be unreasonably delayed at their level and must act consistent with the Rules of 1976.

(15) The writ petition is disposed of accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. (S) No. 5256 of 2016

Shyam Dev

Versus

State of Chhattisgarh & others.

English

(1) Retrial benefits including pension and gratuity of a retiring government servant should be paid on the date of his retirement.

Hindi

(1) सेवानिवृत्त होने वाले शासकीय कर्मचारी की पेंशन एवं उपदान सहित सेवानिवृत्ती हित लाभों का भुगतान उसकी सेवानिवृत्ती की तिथी को किया जाना चाहिए ।