

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 318 of 2017**

- Vijay Kumar Singh S/o Late Shri Ram Sharan Singh Thakur, Aged About 62 Years R/o Thakur Para, Kawardha, P.S. Kawardha, District Kabirdham, (Chhattisgarh)

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

1. State Of Chhattisgarh Through The Secretary, Forest Department, Mahanadi Bhawan, New Raipur, District Raipur, (Chhattisgarh)
2. The Principal Chief Conservator Of Forest, Aranya Bhawan, Medical College, Raipur, (Chhattisgarh)
3. The Divisional Forest Officer, Kawardha Forest Division, District Kabirdham, (Chhattisgarh)
4. The Director, Treasury, Accounts & Pension, Kawardha, District Kabirdham, (Chhattisgarh)

**----Respondents**

For Petitioner:

Mr. Ajit Singh, Advocate

For State :

Mr. Shashank Thakur, Government Advocate

**Hon'ble Shri Justice P. Sam Koshy****Order on Board****24.03.2017**

1. The present Writ Petition has been filed seeking relief of direction to the Respondent Authorities for release of gratuity and leave encashment amount to the Petitioner along with interest from the date it fell due till the date of actual realisation. The Petitioner in the instant case was working as forester from which post he stood superannuated with effect from 31.03.2016. After his retirement the pension and other benefits were finalised and was also processed. However, the gratuity and the leave encashment was not paid to the Petitioner.
2. Learned Counsel for the Petitioner submits that two amounts i.e. the amount under gratuity as well as the leave encashment has not

been released to the Petitioner on account of the pendency of Writ Petition No. 3209/2015 wherein the order of recovery dated 27.04.2015 was under challenge. The Respondent vide its order dated 27.04.2015 had ordered for recovery of an amount of Rs. 47,318/- which according to the Respondents was an excess amount paid to the Petitioner while he was in employment on account of wrong fixation whereby the Petitioner was inadvertently granted benefit of one advance increment.

3. According to the Counsel for the Petitioner there was no reason why the Respondents should have withheld the gratuity as well as leave encashment amount. It was also contended by the Counsel for the Petitioner that even if for the argument sake the Respondent had to withheld any amount of the Petitioner, it could not have been more than the alleged amount of excess payment made i.e. amount of Rs. 47318/-. Though the said amount also could not have been withheld as there was an interim protection granted against the recovery in Writ Petition (S) No. 3029/2015. It was also contended that even if the Respondents had to withheld the amount of Rs. 47318/-, they were duty bound to release the remaining amount of gratuity as well as leave encashment. In withholding of these two clearly depicts the malafide and arbitrary action on part of the Respondents showing no sensitivity towards a retired employee whose sustenance depends upon the retiral dues that he gets.
4. It was lastly submitted by the Counsel for the Petitioner that pending the Writ Petition (S) No. 3029/2015 before this Court, the Respondents have now on the intervention of this Court released the gratuity as well as the leave encashment to the Petitioner.

The gratuity amount of Rs. 5,81,015/- was released to the Petitioner on 17.02.2017. Likewise the leave encashment amount of Rs. 2,04,623/- was also released to the Petitioner on 17.02.2017 i.e. after a period of about 1 year from the date of retirement and the same has been withheld without any rhyme or reason. Therefore, the Respondents are supposed to pay interest on the delayed payment of gratuity and leave encashment. The Counsel for the Petitioner now restricts his claim in the Writ Petition only for interest on the delayed payment.

5. Learned Counsel for the Respondent State opposing the Petition submits that now that the Petitioner's grievance stands redressed nothing further remains to be adjudicated in the Writ Petition and the same deserves to be dismissed as having become infructuous. He submits that the Respondents have bonafidely not released the gratuity and leave encashment amount pending the dispute of recovery order against the Petitioner for an amount of Rs. 47,3018/- in Writ Petition (S) No. 3029/2015. Without finalisation of the said Petition against recovery, the retiral dues of the Petitioner could not have been finalised. Thus prayed for rejection of the Petition.
6. Having heard the rival contentions put forth on either side and on perusal of the record what is undisputed is the fact that the Petitioner stood retired from the service of the Respondents with effect from 31.03.2016 on attaining the age of superannuation. The pension and other retiral dues were released to the Petitioner. No order for withholding of gratuity and leave encashment was ever passed by the Respondents. The alleged

order of recovery issued against the Petitioner by the Respondents was challenged before the High Court in Writ Petition (S) No. 3029/2015.

7. Meanwhile, the Petitioner had filed the present Petition seeking for the release of the amount of gratuity and leave encashment. The Respondents however suo-moto released the gratuity and leave encashment amount on 17.02.2017. There was yet another development of the Writ Petition, WP(S) No. 3029/2015 being allowed by this Court and quashing the order of recovery.
8. Thus, there is an admitted delay in realization of gratuity amount as well as leave encashment amount. No justified and plausible explanation has been offered by the State Government for withholding the gratuity and leave encashment amount. The Writ Petition No. 3029/2015 also stands allowed by this Court vide wherein the order of recovery has been quashed.
9. In the given facts of the case for the delayed releasing of the gratuity and leave encashment amount, the Petitioner deserves to be compensated by awarding interest on the said amount from the date it fell due i.e. the date of retirement till the date the payment was released i.e. 17.02.2017.
10. This view of this Court also stands fortified by a series of decision of the Supreme Court so far as the interest on delayed retiral dues are concerned.
11. It would be trite to refer to the decision of Hon'ble Supreme Court rendered in the case of **D.D. Tewari v. Uttar Haryana Bijli Vitran Nigam Limited & Others [2014 (8) SCC 894]**, wherein, relying upon the decision in the case of **State of Kerala v. M.**

**Padmanabhan Nair [1985 (1) SCC 429]**, it has been held that the pension, gratuity and retiral dues payable to an employee are not a bounty to be distributed by the Government to its employees on their retirement but are valuable rights and property in its hands and any culpable delay in settlement or disbursement thereof must be visited with the penalty of payment of interest. The Supreme Court has very categorically held that denial of interest amounts to miscarriage of justice.

12. Similar view has also been taken by the coordinate Bench of this Court in the case of **Punarad Prasad Bhagal v. State of Chhattisgarh & Others**, decided on 18.03.2013 in **Writ Petition (S) No. 5231 of 2011**, wherein the Court has allowed the said petition under similar circumstances.
13. The view of this Court stands further fortified from the decision of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh and Others v. Dhirendra Pal Singh [2017 (1) SCC 49]**.
14. Considering the authoritative decisions of Hon'ble Supreme Court in the cases of **D.D. Tewari and Dhirendra Pal Singh (Supra)**, this Court is of the opinion that it is a fit case where the Petitioner is entitled for interest on the delayed payment.
15. In the light of the aforesaid decision, in the opinion of this Court in as much as the submissions made by the Petitioner, this is a suitable case for awarding interest on the delayed payment of gratuity and leave encashment amount paid to the Petitioner. Thus the Petitioner shall be entitled for interest of 10% per annum on the gratuity and leave encashment paid to the Petitioner on

17.02.2017 from the date of retirement till the date of actual payment.

16. The Writ Petition is thus allowed.

Sd/-

(P. Sam Koshy)  
**JUDGE**

kishore