

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4249 of 2017**

Smt. Vinita Mamgai, Wife of Shri Mohan Lal Mamgai, aged about 52 yrs, resident of Quarter Nok.21/34, 7th Battalion Chhattisgarh Armed Force Bhilai, District Durg (C.G.)

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

1. State of Chhattisgarh through Secretary, Department of Police, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (C.G.)
2. Director General of Police, Raipur, District Raipur (C.G.)
3. Commandant, 7th Battalion Chhattisgarh Armed Force, Bhilai, District Durg (C.G.)

---- **Respondents**

For Petitioner	:	Mr. Ajay Shrivastava, Advocate.
For State	:	Mr. Ratan Pusty, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****11/01/2018**

(1) Learned counsel for the State would submit that all the pensionary benefits except gratuity have been paid to the petitioner. He submits that gratuity has been retained on the ground of non- vacating governmental accommodation.

(2) Learned counsel for the petitioner would submit that gratuity cannot be retained for non vacating governmental accommodation.

(3) I have heard learned counsel appearing for the parties and considered their rival submissions made hereabove and also gone through the record with utmost circumspection.

(4) In the matter of **R. Kapur v. Director of Inspection (Painting and Publication) Income Tax and another**¹, the Supreme Court has clearly held that right of a retired employee to obtain gratuity is not dependent on vacating the Government accommodation and imposed 18% interest on the authority concerned for non-payment of gratuity. Relevant paragraphs of the report reads as follows:-

“11. The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised occupation is pending, should in our considered opinion, have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1-6-1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48-A. Thus, the civil appeal is allowed. However, there shall be no order as to costs.”

(5) Likewise, in the matter of **Gorakhpur University and others v. Dr. Shitla Prasad Nagendra and others**², the Supreme Court has held that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement

1 (1994) 6 SCC 589

2 (2001) 6 SCC 591

of the terminal benefits. Such is the position with reference to amounts due towards provident fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. The Supreme Court upheld the order of the High Court to pay interest on pension and provident fund in case of overstaying in the allotted accommodation.

(6) In view of the aforesaid legal position, it is held that non vacating government accommodation cannot be a ground to retain the gratuity. Accordingly, the State Government is directed to make payment of gratuity alongwith 8% interest the petitioner within a period of two months from today. As stated by Shri Ajay Shrivastav, learned counsel for the petitioner, the petitioner will vacate the government accommodation within a period of two months from today.

(7) With the aforesaid observations, the writ petition stands finally disposed of. However, the petitioner is at liberty to proceed in accordance with law, if the grievance subsists.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

