

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1954 of 2019

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1. Hira Lal Ram, Male, 38 years,
 2. Bhola Kumar Ram, Male, 24years, both are sons of late Shiv Pujan Ram, Resident of Village- Bahuara, P.O.- Pipra, P.S.- Kargahar District- Rohtas.
 3. Dulari Kumari, Female, 41 years, D/o late Shiv Pujan Ram and wife of Jai Prakash Ram, resident of Village- Ulloh, P.O.- Barkadih, Dist- Rohtas.
 4. Usha Devi, Female, 31 years, D/o late Shiv Pujan Ram, wife of Raj Kumar Ram, resident of Village- Indore, P.O.- Bisunpur, Kochas, Dist- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary cum Commissioner, Finance Department, Bihar, Patna.
2. The Assistant Provident Fund Commissioner (Pension), R- Block, Road No-6, Serpentine Road, Patna, Bihar.
3. The Regional Commissioner, Employees' Provident Fund Organization, R. Block, Patna, Bihar.
4. The Regional Manager, Punjab National Bank, Boaring Road, Patna.
5. The Branch Manager, Punjab National Bank, Babhani Branch, Sasaram, Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajani Kant Pandey, Advocate
For the State/R1	:	AC to GP 26
For the EPFO/R3	:	Mr. Manish Kumar, Advocate
For PNB/R4-5	:	Mr. Kumar Priya Ranjan, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 04-02-2021

Heard Mr. Rajani Kant Pandey, learned counsel for the petitioners; learned Assistant Counsel to Government Pleader 26 for the State; Mr. Manish Kumar, learned counsel for Employees' Provident Fund Organization (hereinafter referred to as the 'EPFO') and Mr. Kumar Priya Ranjan, learned counsel for the Punjab National Bank (hereinafter referred to as the



‘Bank’).

2. The petitioners have moved the Court for the following reliefs:

“... for issuance of appropriate writ, rule or direction in the nature of mandamus commanding upon the respondent authorities for payment of pension for the period July 2000 to September 2010 and penal interest of 12% which may be calculated from the date the amount fell due to the actual date of payment forth with along with exemplary cost for not making payment even after more than 9 years.”

3. Briefly stated, the relevant facts are that the original petitioner (Fekna Devi), after the death of her husband (Shiv Pujan Ram) on 22.02.2008, upon superannuation on 30.06.2000, approached the EPFO for payment of due pension of her late husband and her family pension, by filing an application through her lawyer under the Right to Information Act, and received reply that the EPFO had already sent advice and scroll giving details to the Bank on 29.06.2011 for payment of Rs. 32,874/- pension in the husband's account from 01.07.2000 to 22.02.2008 and also Rs. 14,070/- for payment in her account. Fekna Devi having died during the pendency of the writ petitioner has been substituted by her heirs, the present petitioners.

4. Finally, during the pendency of this application,



payment has been made for the period in question. As the same has been done after what can only be termed an exorbitant delay, and without any fault on the part of the original petitioner, the Court had undertaken a lengthy exercise and had called upon the EPFO and the Bank to file affidavits to (i) bring on record, and; (ii) to clarify certain facts. Many affidavits have been filed; however, the full picture is yet to unravel and has not been made clear by the Bank. The plea is that all records are not available.

5. In the aforesaid background, the Court has proceeded to hear the matter finally and has relied upon the materials available on record, coupled with the submissions of learned counsel for the parties.

6. It is not in dispute that way back, in the year 2011 itself, the EPFO had sent a scroll to the Bank for making payment to the original petitioner and various other persons. On this, the stand of the Bank is that the account number of the original petitioner was not mentioned and further, that the account number of the EPFO itself was mentioned resulting in a situation where the money, which was to be paid into the account of the petitioner, remained in the account of the EPFO.

7. Learned counsel for the EPFO submitted that with regard to twelve persons, there was human error, but the Bank



never reverted to the EPFO for any clarification and, thus, there is no laches on the part of the EPFO.

8. Learned counsel for the petitioners submitted that payments have been made to persons, who were similarly situated by the Bank on the basis of the same scroll, but to the original petitioner, the same was not made.

9. On this specific point, learned counsel for the Bank admitted that with regard to six persons, payments were made, but that was when the Bank was made aware of such grievance of the said six persons and in consultation with the EPFO, the payments were made. However, with regard to the original petitioner, no such exercise was undertaken.

10. When the Court called upon learned counsel for the Bank to place on record the details with regard to when such clarification was actually sought by the Bank and when such clarification was actually provided by the EPFO, to enable it to make payments to the afore-stated six similarly situated persons, learned counsel for the Bank submitted that the records are not available.

11. It emerges that an application under the Right to Information Act, 2005 was filed by the original petitioner seeking to know as to whether her payments, which were not



made for the period in question, had been sent by the EPFO to the Bank, the EPFO informed in response that on 29.06.2011 itself, it had sent the scroll to the Bank and thereupon, it was the duty of the Bank to make the payments. However, on a query of the Court to learned counsel for the EPFO that as to why payments for the period 01.07.2000 to 30.09.2010 were forwarded to the Bank much later, only on 29.06.2011, there was no explanation.

12. Having given the matter its anxious consideration, the Court finds from the materials on record and submissions of learned counsel for the parties that, admittedly, the original petitioner was nowhere at fault and unnecessarily, for many years, such dues were not paid. Now comes the main issue as to the responsibility for such delay the question of award of appropriate interest to be paid to the petitioners to make good their unwarranted loss.

13. In this exercise, the Court would note that admittedly in the scroll sent in the year 2011 by the EPFO to the Bank, neither the old nor new account number of the petitioner was indicated. In its place, the bank account number of the EPFO itself was written. Thus, to that extent, it was gross negligence on the part of the EPFO. In the opinion of the Court,



such act cannot be *simpliciter* termed as human error, particularly as an old retired person (the original petitioner's husband) and thereafter the original petitioner, were not only subjected to hardship due to such act, but also died without receiving their money.

14. Shifting focus now to the role played by the Bank, once the Bank admits that out of twelve similarly situated persons, payments were made to six, the plea that due to interaction between the Bank and the EPFO the payments were made, but when called upon to produce or show any material related to the interaction or correspondence between the Bank and the EPFO by which a clarification was sent regarding account numbers of those persons, learned counsel, as noted hereinbefore, took the stand that the records are not available. Simply put, the Court cannot accept such explanation. Official duties are not to be performed in a casual manner and on a personal level, especially in financial matters, as no officer, either of the EPFO or the Bank would risk his/her career and make payments without the supporting documentary record/material evidencing the basis for payment.

15. Thus, such payments being made to similarly situated persons, but no record or material being available with



the Bank officially to justify how such payments were made, would lead the Court to presume that the Bank being aware of such discrepancy, took no efforts either to obtain clarification or to sort out the matter so that payments could be made. Thus, it was incumbent on the Bank and its officers, who were duty-bound, to ensure that if an error had crept in the scroll sent by the EPFO, which was noticed by the Bank and which is why the payment remained with the EPFO and was not paid to the original petitioner, despite her name being reflected in the scroll and still no effort made by it indicates that there was laches on the part of the Bank also. Such laches cannot be casually viewed for it has resulted in a loss to a pensioner, who was in dire need of such money.

16. Thus, on a holistic appreciation of the entire sequence of events, the Court reaches the conclusion that there has been gross negligence and laches, both on the part of the EPFO and the Bank.

17. That the Court can, and indeed must, award interest in such cases is no longer *res integra*, being well-settled by many decisions of the Hon'ble Supreme Court. However, reference would suffice to a recent judgement of this Court in ***Ram Bilash Singh v the State of Bihar*, MANU/BH/0770/2020**



[the alternate citation being **2021 (1) BLJ 466**], rendered on 10.12.2020, wherein it has been held:

'18. In State of Kerala v. M. Padmanabhan Nair, MANU/SC/0296/1984: (1985) 1 SCC 429, the Hon'ble Supreme Court observed:

'1. 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.

2. Usually the delay occurs by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. 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 month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

(emphasis supplied)

19. In S.K. Dua v. State of Haryana, MANU/SC/7048/2008: (2008) 3 SCC 44, the Hon'ble Supreme Court opined:



'14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.'

(emphasis supplied)

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21. At this juncture, it is appropriate to refer also to the judgment in D.D. Tewari v. Uttar Haryana Bijli Vitran Nigam Limited, MANU/SC/0658/2014: (2014) 8 SCC 894 wherein, from the date of entitlement till the date of payment, the Hon'ble Supreme Court proceeded to award interest @ 9% per annum, both on the amount of pension due and the gratuity amount. The relevant portion thereof reads:

'6. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31-10-2006 and the order of the learned Single Judge after adverting to the relevant facts and the legal position has given a direction to the respondent employer to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for



which the appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgment referred [MANU/SC/0296/1984 : (1985) 1 SCC 429 : 1985 SCC (L & S) 278] to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.

7. It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972. Having regard to the facts and circumstances of the case, we do not propose to do that in the case in hand.

8. For the reasons stated above, we award interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of entitlement till the date of the actual payment. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date the amount falls due to the deceased employee. With the above directions, this appeal is allowed.'

(emphasis supplied)

22. In H. Gangahamune Gowda v. Karnataka Agro Industries Corpn. Ltd., MANU/SC/0086/2003: (2003) 3 SCC 40, it was observed, in the context of the Payment of Gratuity Act, 1972, after noticing M. Padmanabhan Nair (supra), as follows:

'7. It is evident from Section 7(2) that as soon as gratuity becomes payable, the employer,



whether any application has been made or not, is obliged to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity. Under Section 7(3), the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Under sub-section (3-A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in sub-section (3), he shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits; provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. However, under the proviso to Section 7(3-A), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. Under Section 8, provision is made for recovery of gratuity payable under the Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue and pay the same to the person entitled. A penal provision is also made in Section 9 for non-payment of gratuity. Payment of gratuity with or without interest, as the case may be, does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be



ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in State of Kerala v. M. Padmanabhan Nair [MANU/SC/0296/1984: (1985) 1 SCC 429: 1985 SCC (L & S) 278: (1985) 50 FLR 145]. Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3-A) was added to Section 7 by an amendment, which came into force with effect from 1-10-1987. In the case of Charan Singh v. Birla Textiles [MANU/SC/0066/1988: (1988) 4 SCC 212: 1988 SCC (L & S) 947: (1988) 57 FLR 543] this aspect was noticed in the following words: (SCC pp. 214-15, para 4)

"4. There was no provision in the Act for payment of interest when the same was quantified by the controlling authority and before the Collector was approached for its realization. In fact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought about the incorporation of sub-section (3-A) in Section 7. That provision has prospective application."

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9. It is clear from what is extracted above from the order of the learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled to payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7(3-A) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and



that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case the amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to Section 7(3-A), no discretion was left to deny the interest to the appellant on belated payment of gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled to interest, declined to interfere with the order of the learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned Single Judge could not be said to be arbitrary. In the first place in the light of what is stated above, the learned Single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary.'

(emphasis supplied)

23. Further, the Hon'ble Supreme Court, in the context of 'interest', in *Alok Shanker Pandey v. Union of India*, MANU/SC/7114/2007: (2007) 3 SCC 545, reasoned thus:

'9. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that



amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence, equity demands that A should not only pay back the principal amount but also the interest thereon to B.

(emphasis supplied)

24. The view of the Court is fortified by the decision in *Vijay L. Mehrotra v. State of U.P.*, MANU/SC/2286/2000: (2001) 9 SCC 687:

'3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.

4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e., 31-8-1997 till the date of payments.'

(emphasis supplied)

25. Having regard to the facts and circumstances of the case and the submissions canvassed by learned counsel for the parties, and the judgments of the Hon'ble Supreme Court, it is apparent that pension and gratuity are not bounties to be distributed by the Government to its employees on their retirement but, have become, under the pronouncements of the Hon'ble Supreme Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be dealt with by payment of interest at the current market rate till actual payment is made. The Hon'ble Supreme Court has reiterated in D.D. Tewari (supra) that the legal principles laid down in M. Padmanabhan Nair (supra) still hold the field qua the award of interest on delayed payments.'



(emphasis supplied)

18. Accordingly, the Court awards interest, to be payable by the EPFO @ 10% simple interest per annum, for the period from 01.07.2000 to 29.06.2011 and thereafter, the EPFO and the Bank shall pay the same @ 5% simple interest per annum each (the total being 10%) till the date of the amounts being actually credited into the account of the petitioners. The same shall be done within six weeks from today.

19. Learned counsel for the EPFO and the Bank shall communicate the order to the respective authorities for compliance forthwith. Needless to state, both the EPFO and the Bank are at liberty to effect recovery of the cost/amount from the concerned erring employee(s) after fixing responsibility for the same, as per procedure established by law.

(Ahsanuddin Amanullah, J)

J. Alam/-

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