IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23612 of 2018

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Sakina Khatoon W/o Late Abdul Barkat Ahmad Mashhadi Resident of Mohalla Azimabad Colony,Pailawi Villa,PO Mahendru,PS Sultanganj,Dist.-Patna-800006

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary,Department of Finance,Govt. of Bihar,Patna
2. The Principal Secretary, Department of Health,Govt. of Bihar,Patna
3. The Accountant General (Accounts and Entitlement),Bihar,Birchand Patel Path,PO G.P.O.,Patna-800001
4. The Director of Provident Fund, Pant Bhawan,Bailey Road,PO G.P.O.,Patna-800001
5. The Principal,Govt. Tabbi College and Hospital,P.O.Kadam Kuan,Patna-800003
6. The District Magistrate, Patna
7. The District Provident Fund Officer, Patna Collectorate,PO-G.P.O.Dist.-800001
8. The Treasury Officer, Patna Collectorate,PO G.P.O. Dist.-Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Fazal Rahman, Advocate
For the Respondent/s : Mr. Kamlesh Kishore, AC to SC-12

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
Date : 22-03-2023

Heard Md. Fazal Rahman, learned Counsel appearing on behalf of the petitioner and Mr. Kamlesh Kishore, learned AC to SC-12 appearing on behalf of the State.

2. Md. Fazal Rahman, learned Counsel appearing on behalf of the petitioner, submitted that all the retiral dues has been paid but the family pension of the petitioner was fixed very late on 24.08.2019. Although, the husband of the

petitioner died on 11.07.2017, it took nearly 2 years in fixing the pension and 3 years in payment of gratuity interest has not been calculated on delayed payment.

3. Mr. Kamlesh Kishore, learned AC to SC-12 appearing on behalf of the State submitted that the petitioner has already been paid all the retiral dues payable to him. The petitioner is entitled for the interest on delayed payment in terms of the Memo No. 3155 dated 07.11.1981.

4. Considering the fact that it is admitted by the parties that the husband of the petitioner had died on 11.07.2017, however, the family pension of the petitioner was fixed on 24.08.2019 after a delay of nearly 2 years and after delay of more than two years DCR gratuity was also paid to the petitioner. The petitioner is aggrieved by non-payment of interest on account of delayed payment.

5. The Apex Court in the case of ***Vijay L. Mehrotra v. State of U.P. and Ors. reported in (2001) 9 SCC 687,*** observed that retiring employee after having rendered service expects that all the payment of retiral benefits be paid on the date of retirement or soon thereafter and for delay caused by the employer has passed order

contained in paragraph No. 4 which is, *inter alia*, reproduced here under:

> ***"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., 31.08.1997 till the date of payments."***

6. Subsequently, the above view has been reiterated in the case of ***D.D. Tewari (Dead) through Legal Representatives v. Uttar Haryana Bijli Vitran Nigam Limited and Ors. reported in (2014) 8 SCC 894,*** the Apex Court held as under:

> ***"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 [(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.***

> ***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.”***

7. In such circumstances, the petitioner who is a widow cannot be denied due interest at the rate of 9% on delayed payment by the respondent. The respondents are directed to consider to make payment of interest on account of delay in fixation of pension. The executive decision contained in Memo No. 3155 of 07.11.1981 taken by the State Government is not having mandate of Article 309 or Article 166 of the Constitution of India.

8. Accordingly, the present writ petition is allowed.

(Purnendu Singh, J)

Nilmani/-

AFR/NAFR	AFR
CAV DATE	N/A
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