IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14191 of 2021

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Dr. Sanjay Kumar S/o Late Dr. B.L. Prasad Resident of Mahatma Gandhi Road, Opp. Hotel Panchvati, P.S. - Tilkamanjhi, Town and District- Bhagalpur - 812001.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Govt. of Bihar, New Secretariat, Vikas Bhawan, Patna.
2. The Joint Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Director - in - Chief, Department of Department of Health, Govt. of Bihar, New Secretariat, Vikas Bhawan, Patna.
4. TGhe Civil Surgeon - cum - the Chief Medical Officer, Bhagalpur.
5. The Treasury Officer, Bhagalpur.
6. The Accountant General, Bihar, Veer Chand Patel Path, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Purushottam Kumar Jha, Adovcate Mr. Narendra Kumar Sinha, Advocate Mr. Anand Kumar Tiwari, Advocate Mr. Ram Naresh Jha, Advocate
For the Respondent/s	:	Mr. Ajay Bihari Sinha, G.A.-8 Mr. Neeraj Raj, AC to G.A.-8
For the A.G.	:	Mrs. Nivedita Nirvikar, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 13-11-2024

Heard Mr. Purushottam Kumar Jha, learned Advocate for the petitioner and Mr. Ajay Bihari Singh, learned Government Advocate no. 8.

2. The petitioner superannuated on 31.08.2017 from the post of Medical Officer. However after much persuasion and on moving from pillar to post he has been extended the

retirement benefits, barring the due earned leave salary, but much belatedly.

3. On being aggrieved by the inaction of the respondent authorities in not extending the earned leave salary and the delayed payment of other retiral benefits without any interest, the petitioner approached this Court by filing the present writ petition seeking a direction upon the respondent authorities to ensure the payment of earned leave salary for three hundred days, alongwith the interest @ 18% per annum over the delayed payment of pension, gratuity and leave encashment.

4. To support the reliefs as prayed for in this writ petition, the learned Advocate for the petitioner placed heavy reliance upon the Memo No. PC-2-1-46/79/3155 dated 07.11.1981 (***as incorporated in Appendix-6 of the Bihar Pension Rules' 1950***) contemplating that retired State Government employee is entitled for being paid interest @ 5% per annum over the amount of pension and gratuity, if paid after delay.

5. It is further contended that admittedly the earned leave salary has been paid to the petitioner after a delay of more than 3 years and 11 months and, as such, the petitioner is

entitled to get penal interest over the delayed leave encashment amount. Reliance has also been placed on a judgment of the Apex Court in the case of ***Vijay L. Mehrotra vs State of U.P. & Ors., (2001) 9 SCC 687*** wherein the Hon'ble Court has been pleased to allow 18% interest over the delayed payment with effect from the date of the retirement till the date of payment. Further, in order to fortify the claim, aforenoted, reliance has also been placed on a decision of the Supreme Court in the case of ***State of Kerela & Ors. vs. M. Padmanabhan Nair, (1985) 1 SCC 429*** and ***Union of India vs. Justice S.S. Sandhawalia, (1994) 2 PLJR SC 48***.

6. On the other hand learned Senior Advocate for the State referring to the averments made in the counter affidavit has submitted that from the record it transpired that the Government of Bihar in the Department of Health vide Memo No. 1647(2) dated 01.12.2021 has communicated the sanction order to the Accountant General, Bihar, Patna for issuance of authority for payment of unutilized earned leave equivalent to 300 days.

7. So far the claim for payment of interest on delayed payment of pension and gratuity is concerned, it is urged before this Court that there is no provision for payment of statutory

interest against delayed payment. Moreover, the delay is not deliberate in making the payment of pension and gratuity.

8. This Court has heard the learned Advocate for the respective parties and also perused the averments made in the counter affidavit filed on behalf of respondent no. 1 to 3. The counter affidavit does not assign any reason as to why the delay has occurred in ensuring the admissible retiral benefits to the petitioner under the head of pension, gratuity and leave encashment.

9. Admittedly the petitioner superannuated on 31.08.2017. The materials available on record clearly suggest that so far the pension is concerned, it has been extended to him with effect from 06.06.2019 and the gratuity has also been paid on the said date. It is also the admitted position that the leave encashment has been sanctioned on 01.12.2021.

10. There is a clear stipulation in the memo no. PC-2-1-46/79/3155 dated 07.11.1981 that in case of a delay in ensuring the payment of pension and gratuity, the retired employee shall be entitled to get interest @ 5% per annum over the amount of delayed payment.

11. This Court time without number has issued mandate that the entire procedure/formalities of payment of

retiral benefits must be completed before the date of superannuation and the entire payment ought to be made on the date when the Government employees superannuate. The issue of interest over the delayed payment has been considered on various occasions, that in case there is latches on the part of State respondent authorities, the employees must get interest over the delayed payment. It would be apt and proper to refer the judgment of this Court in the case of ***M. Padmanabhan Nair (supra)*** wherein the Hon'ble Court held in paragraph no. 1 as follows:-

> *"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."*

12. The Hon'ble Court further observed that, it will, however, be for the State Government to consider whether the erring officials should or should not be directed to compensate the Government the loss sustained by it by his culpable lapses.

> *"5.We are also of the view that the State Government is being rightly saddled with a liability for the culpable neglect in the discharge of his duty by the District Treasury Officer who delayed the*

issuance of the L.P.C. but since the concerned officer had not been impleaded as a party defendant to the suit the Court is unable to hold him liable for the decretal amount. It will, however, be for the State Government to consider whether the erring official should or should not be directed to compensate the Government the 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."

In the case of ***Justice S.S. Sandhwalia (supra)*** the Hon'ble Apex Court has explicitly observed that :-

"Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year. We uphold this part of the High Court's order."

It would also be pertinent to quote some of the important ruling, mandated the Court to accord interest if there was a delay in payment of post retiral benefits :-

"14. In S.K. Dua v. State of Haryana [(2008) 3 SCC 44] [: (2008) 2 PLJR (SC) 128 (SC)], the Supreme Court held: "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."

15. In H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd., [(2003) 3 SCC 40], the Supreme Court held that if there was a delay in not releasing post retiral benefits, it was mandatory of the court to award interest.

16. The pension or gratuity being no longer bounty, the Supreme Court crystalised the payment of interest for delayed payment as a normal practice in O.P. Gupta v. Union of India, [(1987) 4 SCC 328] in the following words: "Normally, this court, as a settled practice, has been making direction for payment of interest at 12 percent on delayed payment of pension. There is no reason for us to depart from that practice in the facts of the present case."

13. In view of the settled legal position and the contention raised on behalf of the petitioner in causing unexplained delay in ensuring the retiral benefits, including pension and gratuity, which are held to be a property as guaranteed and protected under Article 300-A of the

Constitution of India, this Court has no hesitation to direct the respondent no. 3 to consider the claim of the petitioner for interest over the delayed payment of pension and gratuity, in terms of letter contained in memo no. PC-2-1-46/79/3155 dated 07.11.1981.

14. So far the delay in ensuring the payment of earned leave salary is concerned, the petitioner shall be entitled to get interest @ 6% till the date, it has been sanctioned by the State Government.

15. Suffice to say that if the department opines that the delay has occurred on account of the latches on the part of its officers, they can be proceeded and the amount can be realized from them.

16. The writ petition stands allowed to the extent indicated hereinabove.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.11.2024
Transmission Date	NA