IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11979 of 2019

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Asif Ahmed, aged about 44 years (male), Son of Late Amin Ahmed Resident of Milky Mohalla, P.O. and P.S.- Ara, District- Bhojpur-802301.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Agriculture Department, Bihar, Patna-800015
2. The Principal Secretary, Agriculture Department, Vikash Bhawan, Bihar, Patna-800015
3. The Accountant General (A and E)-II, Birchand Patel Path, Bihar Patna-800001
4. The Director, Finance (Vaiktik Dada Nirdharan Koshang) Department, Birchand Patel Path, Near Gardiner Road Hospital, Patna-800001
5. Prinicpal Secretary, Department of Finance, Govt. of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nesar Ahmad, Advoate
		Mr. Arun Kumar Tiwari, Advocate
For the State	:	Mr. Awanish Nandan Sinha, GP-21
		Mr. Ashok Kumar Pathak, AC to GP-21

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CORAM: HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

Date : 26-06-2024

Heard Mr. Arun Kumar Tiwari, learned counsel appearing on behalf of the petitioner and Mr. Ashok Kumar Pathak, learned State counsel representing respondent nos. 1, 2 and 4. However, none appears on behalf of the respondent no.3.

2. The petitioner has filed this writ petition seeking the relief, which has been specified in paragraph no. 1 of the writ petition as under:

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> *"(a) For issuance of direction to the authorities/ respondents for payment of leave encashment for 300 days amount of gratuity and differed amount of pension of 24 months from the date of retirement of the father of the petitioner in new scale of pay with statutory interest."*

3. The petitioner is the son of late Amin Ahmad, who, on attaining the age of superannuation, retired from the service on 31.07.1999 from the post of District Agriculture Officer (DAO). The father of the petitioner is stated to have died on 11.07.2008.

4. After death of the petitioner's father, the petitioner has filed this writ petition, seeking a direction to the respondents, as can be gathered from the prayer made by the writ petitioner in paragraph no.1 of the writ petition, as quoted hereinabove, for payment of leave encashment of 300 days, gratuity and difference of amount of pension of 24 months from the date of retirement of the petitioner's father in the new scale of pay with statutory interest.

5. Learned counsel for the petitioner has submitted that petitioner, by now, the petitioner has received leave encashment for 240 days @ ₹1,22,504/- (Rupees One Lakh

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Twenty Two Thousand Five Hundred Four) in the month of March, 2021 and gratuity amount of ₹2,51,444/- (Rupees Two Lakhs Fifty One Thousand Four Hundred Forty Four) as well as difference of amount of pension of 24 months from the date of retirement of petitioner's father @ ₹1,48,700/- (Rupees One Lakh Forty Eight Thousand and Seven Hundred) on 14.04.2021. Learned counsel for the petitioner further submits that the petitioner does not have any grievance regarding the quantum of amount determined by the respondents and received by the petitioner with regard to the leave encashment, gratuity and difference of pension of 24 months of the petitioner's father as highlighted hereinabove. The grievance of the petitioner is limited to the delayed payment of the above amounts, for which the petitioner is seeking a direction to the respondents to pay interest on the aforesaid amount for its delayed payment made to the petitioner.

6. Upon hearing the learned counsel for the petitioner and on perusal of the records, it appears that this Court has been called upon to adjudicate as to whether the petitioner would be entitled for payment of any interest on the aforesaid amount paid by the respondents to the petitioner belatedly.

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7. When this matter was taken up for consideration on 04.03.2021, this Court had passed the following orders:

> *"Learned counsel for the petitioner is permitted to add Principal Secretary, Department of Finance, Government of Bihar, Patna as party respondent no.5 in course of the day.*
>
> *Pursuant to the order dated 13.01.2021, a Fifth Supplementary counter affidavit has been filed on behalf of respondent no.1.*
>
> *A reading of the 5th Supplementary counter affidavit would show that only after an order is being passed by this Court exhorting the respondents to do some exercise, they proceed further with some exercise. The records of this case speak for themselves and in the background of the order dated 31.08.2020 where this Court has already observed that there being a delay of over 20 years in making payment of the retiral dues of a retired employee, the Court is seriously thinking to award some reasonable cost and interet which will be realized from the erring officials, today, this Court proceeds further in the matter.*
>
> *Now the fifth supplementary counter affidavit, in paragraph '8' of the affidavit it is stated that the case is very old one and the*

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claim of the applicant is not supported by any evidence, therefore, the department has taken the following steps to resolve. In paragraph '9', '10' & '11' the following steps have been made:-

> *"9. That after the perusal of the record and massive search at all the probable places since no record pertaining to his period claimed as waiting for posting was found, so the department after seeking advice of the Finance Department, which is the competent authority, had issued an office order declaring the period as extraordinary leave and thus the said period was thereby regularised.*
>
> *10. That further it is to mention that, by now, new records have come to the notice of the department such as his notification for posting etc. in the light of which the department is under active consideration regarding regularization of deceased's waiting for posting period. The file along with recently found records being sent to the Finance Department which is the competent*

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> *authority for regularising the service if there is any break for more than one year as it has appeared to be in this case.*
>
> *11. That it is humbly stated and submitted that as to para(f), it is to mention that since the last office attended by the deceased has issued the no liability certificate the AG is being communicated once again to look into the matter why the part pension payment and Gratuity payment was not done."*

The statements quoted above only indicate that even the Fact Finding Committee which was constituted pursuant to the order passed by this Court on 31.08.2020 did not took into all the records. It is only when this Court passed the last order, now some so-called massive search have been conducted to find out the records and fresh facts have appeared.

The affidavit is still not disclosing as to how much time is likely to be taken in completing the whole exercise. The Court is anxious to know as to why the two departments i.e. the Department of Agriculture and the Department of Finance cannot act in tandem with each other in a

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case of this nature where gross inordinate delay has already occurred in making payment of the retiral dues of the deceased employee.

In the opinion of the State, this is one of those cases in which all efforts were required to be taken to complete the process of approvals between the two Departments within few hours. Unfortunately for the 'system' as it is known there is no urgency.

At this stage, learned counsel for the petitioner has placed before this Court a copy of letter bearing No. 41 contained in Memo No. 1506 dated 1804.2001 issued under the signature of the then Director, Agriculture, Bihar to the Accountant General, Bihar. This Letter certifies that there were no dues against the father of the petitioner.

Learned counsel submits that even the Accountant General Office sat over the matter and in the name of 'no does certificate' the post retiral dues of the father of the petitioner were withheld. Now this fifth supplementary counter affidavit discloses that the 'no liability certificate' is being communicated once again to the Accountant General to facilitate payment of the part pension and the gratuity amount.

Leaned counsel for the State once

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again prays for four weeks time but this Court is now willing to grant further indulgence. Since 16.06.2020 this Court has taken up this matter on seven dates with adjournments every time and directions to the respondents to do some significant act towards resolution of the disputes.

As a matter of last indulgence, this case is being fixed for 15th of March, 2021 with a direction to the Principal Secretary, Department of Agriculture, Government of Bihar (respondent no.2) and Principal Secretary, Department of Finance, Government of Bihar (respondent no.5) to act in tandem with each other, resolve all the issues and make available the sanction orders and the other requirements as pointed out by the Accountant General.

In this regard, Mr. Prabhat Ranjan, learned counsel for the Accountant General has informed this Court that the Accountant General has already written a letter bearing NO. 1015 dated 18.12.2021 to the Joint Director, Department of Agriculture, Government of Bihar.

In view of Annexure '4' to the writ application which is an affidavit sworn by all other legal heirs in favour of the petitioner, the department shall take an appropriate view to request the Accountant

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General to issue authority slip in favour of the petitioner and taking note of his affidavit (Annexure '4') requirement of obtaining the photographs or sample of the signatures of other sons may be dispensed with.

The entire payment be made to the petitioner latest by 22nd of March, 2021. Violation of the order passed by this Court today shall invite consequential orders.

The Principal Secretary, Department of Agriculture, Government of Bihar, Patna shall also inform as to whether in view of the report of the Fact Finding Committee, the officers/employees because of whom this delay of over 20 years have occurred, have been identified. If they have not been identified till today, on the next date there must be a report clearly stating as to how and because of whose fault this extraordinary delay has occurred and why an appropriate cost and interest be not allowed to the petitioner which will be realised from the erring officials."

8. On 24.03.2021 this Court had passed the following order:

"In today's hearing, learned counsel for the State as well as the learned counsel for the Accountant General have informed

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this Court that pursuant to the last order dated 04.03.2021, the arrear of salary being Rs. 1,63,205/- has been paid to the petitioner. It is further submitted that the Pension Payment Order (P.P.O.) has been issued in favour of the petitioner. The Court has also been informed that after getting a 'no dues certificate' from the department, the Accountant General has sanctioned and authorised the payment of gratuity amount. These payments are now required to be made by the Treasury Officer, Muzaffarpur.

Learned counsel for the petitioner submits that in this case there is a huge inordinate delay in payment of the outstanding dues of the father of this petitioner. The arrear of salary has though been paid but without any interest. Further, it is informed that the P.P.O. and gratuity authorisation have been issued without proper calculation of the amount by the Office of the Account General. Learned counsel for the petitioner submits that no statutory interest has been paid on the gratuity and the outstanding P.P.O. for the delayed period.

Let this matter appear in the list on 6th April, 2021. In the meantime, it is expected that the Treasury Officer, Muzaffarpur shall pay the amount to the petitioner in terms of

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> *P.P.O. and the authorised gratuity. The submission of learned counsel for the petitioner as regards payment of interest etc. for the delayed period and other submissions will be considered on the next date."*

9. And on 15.02.2024, this Court had passed the following order:

> *"This writ petition pertains to non-payment of leave encashment, gratuity and difference amount of pension of 24 months from the date of retirement of the petitiner's father, who had retired from the post of District Agriculture Officer on 31.07.1999.*
>
> *2. The payment sought for, as above, is stated to have been paid by now, but after a gap of 21 years. The petitioner is now praying for interest on the aforesaid amount paid after a gap of 21 years and the cost of litigation.*
>
> *3. This Court by an order dated 04.03.2021 while directing the respondent authorities to make the payment had also passed the following directions:*
>
> > *"The Principal Secretary, Department of Agriculture, Government of Bihar, Patna shall also inform as to whether in view of the report of the Fact Finding Committee, the*

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officer/employees because of whom this delay of over 20 years have occurred, have been identified. If they have not been identified till today, on the next date there must be report clearly stating as to how and because of whose fault this extraordinary delay has occurred and why an appropriate cost and interest be not allowed to the petitioner which will be realized from the erring officials."

4. After the aforesaid order dated 04.03.2021 was passed by this Court, the State has not informed this Court as to whether officer(s)/employee(s) because of whose fault this extraordinary delay has occurred has been identified or not.

5. Mr. Ashok Kumar Pathak, learned counsel for the State submits that in terms of the order dated 04.03.2021, 6th supplementary counter affidavit dated 28.06.2021 has been filed, in which he submits that the sequence of events have been explained. But the learned counsel for the State has not been able to point out from the 6th supplementary counter affidavit filed by the State, namely, Respondent Nos.1 and 2, that the direction contained in the order

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dated 04.03.2021 regarding identification of the erring officials has been complied with.

6. In that view of the matter, the State respondents are granted further four weeks' time to file an affidavit indicating the compliance of the order dated 04.03.2021 as quoted hereinabove.

7. Learned counsel for the petitioner is also permitted to file an additional affidavit indicating the amount of interests and the litigation cost that the petitioner may be entitled to under the law."

10. Pursuant the order dated 15.02.2024, respondent nos. 1 and 2 have filed 7th supplementary counter affidavit.

11. Insofar as the payment of leave encashment and difference of amount of pension of 24 months after the retirement of petitioner's father are concerned, in paragraph nos. 16, 17, 18, 19 and 20 of the 7th supplementary counter affidavit filed by the respondent nos. 1 and 2, it has been stated as under:

"16. That it is also not in dispute that after death of the father of the petitioner, his mother made an application on 08.08.2008 to the Department for payment of gratuity, leave encashment, arrears of salary for the period from 24.02.1997 to 31.03.1998 (waiting for posting period) and arrears of

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pension from August, 1999 to October, 2001 as during this period according to her only ₹ 65,947/- was paid.

17. That no sooner the application dated 08.08.2008 was received in the Department, the Department of Agriculture without making any delay, issued sanction letter bearing memo no.- 6308 dated 04.09.2008 to the Deputy Secretary, Finance Department in respect of leave encashment of total 206 days.

18. That in response thereto, the Finance Department vide letter no.- J512 dated 26.06.2019 asked the Administrative Department to furnish the name of Treasury as well as the name of Drawing and Disbursing Officer so that the Authority letter in respect of leave encashment may be issued in his favor. However, the earlier letter bearing no. 137 dated 03.02.2017 has also been referred in the letter dated 26.06.2019.

19. That is is stated that immediately after receipt of letter dated 26.06.2019 the administrative Department furnished the name of Treasury and Drawing and Disbursing Officer to the Finance Department vide letter no.- 2592 dated 07.08.2019.

20. That so far waiting for posting is

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> *concerned, the late father of the petitioner had never made such request either during service period or even after his retirement. However, the said period was regularized by the Department treated as on duty. Thereafter, the period of leave encashment was enhanced from 206 days to 240 days (34 days)"*

12. From the 7th counter affidavit filed by the respondent nos. 1 and 2, the relevant paragraphs of which have been quoted hereinabove, it is noticed that according to the respondent nos. 1 and 2, the late father of the petitioner had never approached the respondents during his service period or immediately after his retirement raising any grievance regarding the leave encashment and difference of pension. However, after the death of the father of the petitioner, the mother of the petitioner filed an application on 08.08.2008 to the concerned Department for payment of leave encashment and arrears of pension from August, 1999 to October, 2001. Soon after the application dated 08.08.2008 was received by the Department, the Department of Agriculture had immediately issued a sanction letter bearing Memo No. 6308 dated 04.09.2008 to the Deputy Secretary, Finance Department in respect of leave

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encashment of 206 days. It is further noticed that even though the Department of Agriculture had sanctioned the leave encashment of the petitioner's father on 04.09.2008, the Finance Department had asked the Administrative Department to furnish the name of Treasury as well as Drawing and Disbursing Officer only on 26.06.2019 vide Letter No. J512. On receipt of the letter dated 26.06.2019 from the Finance Department, the Administrative Department furnished the name of Treasury and Drawing and Disbursing Officer to the Finance Department on 07.08.2019 vide Letter No. 2592. Thereafter, it appears that an amount of ₹1,22,504/- (Rupees One Lakh Twenty Two Thousand Five Hundred Four) was paid to the petitioner as leave encashment of the petitioner's father in the month of March, 2021, as stated by the learned counsel for the petitioner and an amount of ₹1,48,700/- (One Lakh Forty Eight Thousand Seven Hundred) was paid on 14.04.2021, being the difference of pension of the petitioner's late father for the period of 24 months from the date of the retirement of the petitioner's father.

13. It, thus, appears that though the amount for leave encashment and the difference of pension of 24 months of the petitioner's late father was sanctioned by the Department on 04.09.2008, but the Finance Department took up the matter only

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on 26.06.2019 asking for the name of the Treasury and Drawing and Disbursing Officer leading to final the payment of the leave encashment and difference of pension of 24 months of the petitioner's late father in the month of March, 2021 and April, 2021 respectively, which is more than 12 years after the amount was sanctioned by the Department. The delay of more than 12 years in making payment of the leave encashement and difference of pension of 24 months from the date of sanction by the Department is therefore attributable to the respondent authorities namely respondent nos. 1, 2 and 4.

14. Insofar as, gratuity is concerned, in paragraph nos. 8, 9, 21 and 22 of the 7th supplementary counter affidavit filed by the respondent nos. 1 and 2, it has been stated as under:

> *"8. That on 15.11.2000, the State of Bihar was bifurcated. After retirement of the deceased employee, the Administrative Department issued sanctioned order bearing letter no.-2039 dated 19.06.2001 itself in respect of pension/family pension and death-cum-retiral gratuity w.e.f. 01.08.1999*
>
> *9. That in the light of sanction letter the Accountant General, Bihar issued P.P.O. No.- 307710 (Provisional) vide letter no.-2098 dated 20.07.2001 mentioning therein that the 'G.P.O. adjusted" for the reason*

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best known to the Accountant General itself.

21. That it is humbly submitted that so far gratuity is concerned, the Department had already issued sanction letter in the year 2001 itself and thereafter, necessary further action was to be taken at the level of Accountant General, Bihar. From letter dated 1-1.01.2021 issued by the A.G., Bihar addressed to the Administrative Department it transpires that due to unavailability of original file it is not clear as to why the word adjust/held up was mentioned in the Authority Slip of gratuity issued by the A.G.,Bihar

22. That as stated above, although the Administrative Department had already issued sanction letter in respect of pension and gratuity in the year, 2001 however, considering the request of A.G, Bihar, the Joint Secretary, Agriculture Department has again made available the required information to the A.G., Bihar in respect of gratuity vide letter no.-315 dated 25.01.2021"

15. Reading of the 7th counter affidavit filed by the respondent nos. 1 and 2, the relevant paragraphs of which have been extracted hereinabove, shows that the Administrative

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Department had issued a sanction order vide Letter No. 2039 dated 19.06.2001 for payment of pension/family pension and death-cum-retiral gratuity with effect from 01.08.1999. In the light of the aforesaid sanction letter, the Accountant General, Bihar appears to have issued P.P.O. No. 307710 (Provisional) vide Letter No. 2098 dated 20.07.2001 mentioning therein that the 'GPO adjusted'.

16. The respondent no. 3 has not filed further affidavits pursuant to any of the orders passed by this Court on 04.03.2021 and thereafter on 24.03.2021 and 12.04.2021.

17. The respondent no.3, however, has filed a counter affidavit on 27.01.2021 wherein, in paragraph nos. 7 to 13, it has been stated as under:

> *"7. That the Fact Finding Committee so constituted has submitted a report which has been brought on record in the Forth Supplementary Counter Affidavit stating therein that the Department of Finance vide Letter No. 1069 dated 20.08.2008 has made available, the service history of the deceased employee to the office of the Accountant General, (Answering Respondent) but despite the lapse of about 11 years, the gratuity amount has not been sanctoned.*
>
> *8. That considering the aforesaid statement*

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and findng of the Committee, the Hon'ble Court was pleased to accept a prayer for adjournment on behalf of the Answering Respondent so as to clarify the position by filing Counter Affidavit or appropriate pleadings.

9. That the answering Respondent humbly submits that office of Accountant General (A & E), Bihar, Patna issues the Authority Letter for Gratuity and Pension etc. on the basis of the No Dues Certificate issued by the Entitlement Cell (Finance Department) Government of Bihar or the concerned Administrative Department in respect of any Long Term or Short Term Advances (if any) outstanding with the employee.

10. That for authorization of the gratuity, a No Dues Certificate is required to be issued by the Entitlement Cell (Finance Department) Government of Bihar and a Certificate with regard to clearance of all other Department Dues; which in the present case is still awaited from the Department.

11. That the answering Respondent humbly submits that till date, only the Service history has been provided by the Department and the No Dues Certificate which are mandatory in nature has not been furnished in the office of the Answering Respondent so as to process the authorization of gratuity

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amount.

12. That the office of the Answering Respondent, considering the nature of the grievance has been continuously pursuing the matter with the Administrative Department i.e. the Department of Agriculture, Government of Bihar vide Office Letter No. PEN-17930 dated 13.11.2019, PEN-17-158 dated 09.07.2020, PEN-17-223 dated 21.09.2020 and PEN-17-830 dated 11.01.2021

13. That again, in view of the order dated 13.01.2021 passed by the Hon'ble Court, yet another Letter No. PEN-17-880 dated 22.01.2021 has been issued to the Deputy Secretary, Department of Agriculture, Government of Bihar, requesting for "

18. From perusal of the counter affidavit filed by the respondent no.3, it appears that the respondent no.3 could not issue authorization letter for payment of gratuity due to non-furnishing of 'No Dues Certificate' either by the Finance Department or by the Agriculture Department. It is further stated that for issuance of authorization of payment of gratuity, 'No Dues Certificate' from the Administrative Department or the Finance Department is mandatory. The respondent no.3 has further stated that despite several correspondence made to the

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Agriculture Department, the 'No Dues Certificate' has not been furnished by the Department concerned, as a result, the authorization of the gratuity amount could not be issued. The counter affidavit filed by the respondent no.3 further shows that the respondent no.3 has been pursuing the Department of Agriculture, Government of Bihar for issuance of 'No Dues Certificate' vide letter dated 13.11.2019, 21.09.2020 and 11.01.2021, as can be gathered from paragraph no. 12 of the counter affidavit filed by the respondent no.3. In the light of the respondent no.3, pursuing the Department of Agriculture in the year 2019, 2020 and 2021 for furnishing 'No Dues Certificate', as discussed hereinabove, it appears from paragraph no.22 of the 7th supplementary counter affidavit filed by the respondent nos. 1 and 2 that considering the request of Accountant General, Bihar, the Joint Secretary, Agriculture Department has made available the required information to the Accountant General, Bihar vide Letter No. 315 dated 21.01.2021, in respect of the gratuity. Though, it has not been indicated in paragraph no. 22 of the 7th supplementary counter affidavit filed by the respondent nos. 1 and 2, as to what request or query, the Accountant General, Bihar had made, pursuant to which, the information sought for by the Accountant General, Bihar was

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furnished by the Department of Agriculture vide letter dated 25.01.2021, but it appears that it was pursuant to the information provided by the Department of Agriculture vide letter dated 21.01.2021 that the gratuity amount of ₹2,51,444/- (Rupees Two Lakh Fifty One Thousand Four Hundred and Forty Four) has been paid to the petitioner on 14.04.2021, which is after more than 20 years from the date the Department of Agriculture had sanctioned the gratuity amount of the petitioner's late father on 19.06.2001.

19. From reading of the 7th supplementary counter affidavit filed by the respondent nos. 1 and 2 as well as counter affidavit filed by the respondent no.3 as discussed hereinabove, it appears that the delay in payment of gratuity of the petitioner's late father is also attributable to the respondent nos. 1, 2 and 4.

20. In view of the discussions made hereinabove, I am of the considered view that there has been an inordinate delay on the part of the respondents, more particularly, by respondent nos. 1, 2 and 4 in payment of leave encashment, gratuity and difference of pension of 24 months of the petitioner's late father.

21. Accordingly, the respondent nos. 1, 2 and 4 are,

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hereby, directed to pay an interest at the rate of 12% per annum on the amount of ₹1,22,504 (Rupees One Lakh Twenty Two Thousand Five Hundred Four), which is an amount paid to the petitioner for leave encashment of the petitioner’s late father for 240 days from 04.09.2008 (date of sanction) to March 2021 (month and year of actual payment). The respondent nos. 1, 2 and 4 are also directed to pay interest at the rate of 12% per annum on the amount of ₹ 2,51,444/- (Rupees Two Lakh Fifty One Thousand Four Hundred Forty Four) and ₹1,48,700/- (Rupees One Lakh Forty Eight Thousand Seven Hundred) which are the amounts of gratuity and difference of pension of the 24 months of the petitioner’s late father for the period 04.09.2008 (date of sanction of the gratuity) to 14.04.2021 (date of actual payment) to the petitioner.

22. The writ petition is disposed of with the above directions.

(Nani Tagia, J)

Nilmani/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.06.2024
Transmission Date	NA

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