



2024:DHC:5169



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 5th July, 2024+ **W.P.(C) 1262/2022****DR. RAISA PARVEEN**

.....Petitioner

Through: **Mr. Bajrang Vats, Advocate.**

versus

THE PRINCIPAL, SATYAWATI COLLEGE**MORNING (DELHI UNIVERSITY) & ORS.**

.....Respondents

Through: **Mr. Mayank Yadav and Ms. Nirmala Singh, Advocates for R-1.****Mr. Rishabh Sahu, Senior Panel Counsel with Mr. Sameer Sharma, Advocate for R3.****Mr. Apoorv Kurup and Ms. Gauri, Advocates for R4.****CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India seeking the following reliefs:

“a) Issue Writ of Mandamus or any other Writ to the extent that the Respondent No.1 College be directed to release Retirement Gratuity to the Petitioner for service period of 22.07.2008 to 31.10.2021 under the Payment of Gratuity Act, 1972 along with statutory rate of interest @ 10% per annum from the due date till date of actual payment.

b) Hold and declare that Letter Dated 12.04.2017 of the Respondent No.3 MHRD/Ministry of Education (Annexure P-2) is unconstitutional, totally baseless, discriminatory, misconceived, wrong, arbitrary and illegal.

c) Quash Letter Dated 12.04.2017 of the Respondent No.3 MHRD/Ministry of Education (Annexure P-2) being unconstitutional, totally baseless, discriminatory, misconceived, wrong, arbitrary and illegal.



2024:DHC:5169



d) Hold and declare that the petitioner is entitled to draw/receive retirement gratuity for service period of 22.07.2008 to 31.10.2021 under the provisions of the Payment of Gratuity Act, 1972.

e) Hold and declare that the Respondent No.1 College is bound by law to pay retirement gratuity to the petitioner for service period of 22.07.2008 to 31.10.2021 under the provisions of the Payment of Gratuity Act, 1972.

f) Pass such other orders/directions in favour of the petitioner as this Hon'ble Court deem necessary to secure ends of justice."

2. Petitioner was appointed as Assistant Professor in the Department of Urdu with Respondent No. 1/College on 22.07.2008 on *ad hoc* basis and her services were regularised on 09.02.2009 and she became a subscriber of New Pension Scheme ('NPS'). In April, 2021, Petitioner was promoted to the post of Associate Professor w.e.f. 22.07.2020. On 23.09.2021, Central Civil Services (Payment of Gratuity under National Pension System) Rules, 2021 were notified in the Gazette and came into force from the said date. Petitioner superannuated on 31.10.2021 on attaining the age of 65 years and was paid leave encashment.

3. Case of the Petitioner is that on retirement, she was entitled to payment of retirement Gratuity for the long service rendered by her but despite repeated written representations and reminders and personal visits to the College, the retirement Gratuity was not released, compelling the Petitioner to file the present writ petition.

4. Short affidavit has been filed on behalf of the College, in which it is stated that Gratuity to the tune of Rs.3,64,507/- has been paid to the Petitioner on 06.07.2023 after approval was granted and no further dues are payable to him. It is further stated that Gratuity was made applicable to NPS subscribers vide Notification dated 16.12.2022 by Government of India and thereafter, approval from the University took some time and therefore, the College cannot be blamed for the delay, if any, in the release of the Gratuity.



2024:DHC:5169



5. Learned counsel for the Petitioner does not dispute receipt of the Gratuity amount but claims interest on the same on account of delay in payment of the said retiral benefit. It is urged that from the date of retirement, Petitioner has been repeatedly approaching the College for release of the Gratuity amount drawing their attention to the provisions of the Payment of Gratuity Act, 1972 and the judgment of this Court in ***University of Delhi v. Raja Singh and Others, W.P. (C) 2678/2015***, decided on 18.05.2015, where the Court held that the said Act was applicable to Delhi University and had an overriding effect on Statute 28A of the Delhi University Statutes. It is further argued that it is no longer *res integra* that when there is a delay in paying retirement dues to retired employees, for no fault of theirs, they will be entitled to interest on delayed payments.

6. Heard learned counsels for the parties.

7. Insofar as payment of Gratuity is concerned, it is an undisputed position today that all dues on account of retirement Gratuity stand paid to the Petitioner. The limited issue that remains for consideration is interest on delayed payment of the Gratuity amount and this issue, as rightly contended on behalf of the Petitioner, is no longer *res integra*. In ***D.D. Tewari (Dead) Through Legal Representatives v. Uttar Haryana Bijli Vitran Nigam Limited and Others, (2014) 8 SCC 894***, the Supreme Court reiterated that pension and Gratuity are no longer the bounty of the State to be distributed to the employees on their retirement but are valuable rights. In ***State of Kerala and Others v. M. Padmanabhan Nair, (1985) 1 SCC 429***, the Supreme Court observed that pension and Gratuity are valuable rights and property in the hands of the employees and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of



2024:DHC:5169



interest at the current market rate till actual payment to the employees. In this context, I may also allude to judgment of the Constitution Bench of the Supreme Court in ***D.S. Nakara and Others v. Union of India, (1983) 1 SCC 305***, where the Supreme Court succinctly described the concept of superannuation and entrancingly elucidated the goals of pension and retiral benefits, as follows:-

“20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330 : AIR 1971 SC 1409 : 1971 Supp SCR 634 : (1971) 1 LLJ 557] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh. [(1976) 2 SCC 1 : 1976 SCC (L&S) 172 : AIR 1976 SC 667 : (1976) 3 SCR 360]”

8. The Supreme Court observed that a political society, which has a goal of setting up a welfare State, would introduce and has, in fact, introduced a welfare measure wherein retiral benefits are grounded on considerations of State's obligation to its citizens, who have rendered service during the useful span of life so that they are not left to penury in their old age. That pension and Gratuity are not the bounty of State has been emphasised and reiterated and reinforced by the Supreme Court time and again and I may only refer to the judgments in ***State of Rajasthan and Others v. Mahendra Nath Sharma, (2015) 9 SCC 540*** and ***State of Himachal Pradesh and Others v. Rajesh Chander Sood and Others, (2016) 10 SCC 77***, in this context, to avoid prolixity.



2024:DHC:5169



9. Equally settled is the law on grant of interest on delayed payments of retiral benefits and the Supreme Court and other High Courts have time and again held that when an employer delays release of retiral benefits, he is bound to pay interest on the delay. Without burdening this judgment, I may refer to the judgment of the Calcutta High Court in case of ***Padma Nath v. State of West Bengal and Others, 2019 SCC OnLine Cal 2185***, which captures other judgments on the issue and relevant paragraphs are as under:-

“6. The decisions relied upon support the settled law on the right of a retired teacher or employee to his/her retirement benefits without any delay. The principle that the disbursement of pension and other retirement benefits should not be treated as a matter of bounty but are valuable rights and property and any delay in settlement or disbursement thereof must be compensated with the penalty of payment of interest at the current market rate till actual payment to the employee, as has been held in several cases, including in State of Kerala v. M. Padmanabhan Nair ((1985) 1 SCC 429) [see also D.D. Tewari v. Uttar Haryana Bijli ((2014) 8 SCC 894 : AIR 2014 SC 2861)]. In D.D. Tewari, the court awarded interest to the legal representatives of the deceased employee upon holding that there has been a miscarriage of justice on denial of payment of interest.

7. In Niranjana Kumar Mondal v. The State of West Bengal reported in (2012) 1 WBLR (Cal) 903, this court relying on Aloke Shanker Pandey v. Union of India reported in (2007) 3 SCC 545 : AIR 2007 SC 1198 explained the concept of grant of interest in that interest is not a penalty or punishment but is an accretion on capital. Interest is therefore to make good the loss of opportunity to the person who could have earned interest on a certain sum of money if that sum of money had been paid to that person on time. The element of compensation also arises from the possible gain made by the person who withheld the amount of money for a certain period of time on the premise that the person thus deprived may have earned interest on the amount invested. The equitable consideration is therefore not only to pay the principal amount to the person who has been deprived but also the amount which that person could have earned by way of interest on the principal amount for the period when the principal amount had been with the concerned authority. In S.K. Dua v. State of Haryana reported in (2008) 3 SCC 44, the issue before the Supreme Court was whether the appellant was entitled to interest on his retirement benefits which were kept pending due to certain charges pending against the appellant. The retirement benefits in that case were paid to the appellant four years after his superannuation. The emphatic words used by the Supreme Court are set out below;



2024:DHC:5169



“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.”

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11. That the right of writ petitioner to get his retiral dues on the date of attaining superannuation is a valuable right and a legal duty is hence cast upon the concerned authorities to ensure that such a right is not defeated; Satya Ranjan Das v. The State of West Bengal reported in (2007) 3 CLT 531.”

10. Even recently in ***Dr. A. Selvaraj v. C.B.M. College and Others, (2022) 4 SCC 627***, the Supreme Court has observed that a retired employee is entitled to interest on delayed payment of retiral benefits, if he is not at fault for the delay. Earlier, a Division Bench of this Court in ***K.L. Manhas v. Union of India and Ors., 2015 SCC OnLine Del 12258*** and Single Benches in ***R.P. Tak v. Secretary, Ministry of Heavy Industries & Public Enterprises and Anr., 2017 SCC OnLine Del 10760*** and ***H.N. Sharma and Ors. v. Govt. of NCT of Delhi and Ors., W.P. (C) 1724/2017***, decided on 21.08.2020 have allowed interest on retiral benefits.

11. In the present case, Petitioner had admittedly superannuated on 31.10.2021 and the retirement Gratuity was paid to her in two tranches i.e. in April, 2023 and 06.07.2023 and for no fault of hers. In view of the aforesaid discussion, Petitioner has made out a case for grant of interest on delayed



2024:DHC:5169



payment of retirement Gratuity and it is directed that Respondent No. 1 shall pay simple interest @ 8% p.a. to the Petitioner on the amount of retirement Gratuity paid to her from the date the same became due, till the date of actual payment. The payment shall be made within a period of six weeks from today.

12. Writ petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

JULY 5, 2024/DU/JG/shivam