



2024:DHC:8783



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 04th November, 2024

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W.P.(C) 1387/2020

PROF. MADAN MOHAN

.....Petitioner

Through: Mr. Anil K. Aggarwal and Mr.
Pranjal Singh, Advocates with Petitioner in person.

versus

UNIVERSITY OF DELHI AND ORS.

.....Respondents

Through: Mr. Mohinder J.S. Rupal, Mr. Hardik
Rupal and Ms. Aishwarya Malhotra, Advocates for
R1/DU.

Mr. Apoorv Kurup and Ms. Gauri Goburdhun,
Advocates for R-2/UGC.

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 Article 226 of the Constitution of India seeking retirement gratuity due to the Petitioner from 31.03.2018, i.e., the date of his superannuation along with interest at the rate of 18% per annum till the date of actual payment.
2. Petitioner joined the University of Delhi as a Professor on 06.11.2006. In the wake of his impending retirement, Petitioner made a representation on 12.02.2018 to settle his retirement dues. Upon retirement, Petitioner received all his dues except retirement gratuity. In response to Petitioner's request, he was informed vide letter dated 08.05.2018 by the University that benefit of retirement gratuity had been withheld pending a decision with



regard to payment of gratuity to those covered under the New Pension Scheme ('NPS'). Petitioner thereafter made several representations followed by a legal notice, but the gratuity was not released compelling the Petitioner to approach this Court.

3. Learned counsel for the Petitioner, during the course of hearing hands over a document which is an Internal Audit Section II Note dated 05.10.2023 and concedes that the retirement gratuity to the tune of Rs.14,38,204/- has been received by the Petitioner but prays for interest on delayed payment of gratuity as the same has been paid on 05.10.2023, whereas it was due and payable on 31.03.2018. It is argued that Petitioner is entitled to compound interest in accordance with Section 8 of the Payment of Gratuity Act, 1972 (hereinafter referred to as '1972 Act') or in the alternative, at the rate of 10% per annum under Section 7 (3-A) of the 1972 Act.

4. Short affidavit has been filed on behalf of the University, in which it is stated that there is no delay on the part of the University in releasing the payment of gratuity and thus, the University cannot be saddled with interest. Learned counsel explains that the University adopted O.M. dated 16.12.2022 issued by Ministry of Education, which provided that employees appointed on or after 01.01.2004 and covered under NPS will be entitled to gratuity under the 1972 Act, only in the Executive Council meeting held on 03.02.2023 and immediately thereafter, case of the Petitioner was processed and gratuity was released.

5. Heard.

6. Insofar as the argument of the Petitioner that he is entitled to compound interest under Section 8 of 1972 Act is concerned, plain reading



of the said provision shows that Section 8 is applicable when person entitled to gratuity makes an application to the Controlling Authority, appointed by the Appropriate Government under Section 3 of 1972 Act, aggrieved by non-payment of gratuity within the time prescribed under the 1972 Act, the authority shall issue a certificate for the amount in question to the Collector, who shall then recover the gratuity amount together with compound interest thereon. Admittedly, Petitioner has not followed this course of action and on a pointed query to the learned counsel, he submits that the Petitioner does not press the compound interest and will be satisfied if interest is granted under Section 7 (3-A) of 1972 Act.

7. The stand of the University that it is not at fault in delaying the release of gratuity to the Petitioner since the University decided to adopt the O.M dated 16.12.2022 issued by the Government only in its Executive Council's meeting held on 03.02.2023, as till that date it was unclear if Petitioner was entitled to gratuity under 1972 Act, cannot be accepted. In ***University of Delhi v. Ram Prakash and Ors., 2015 SCC OnLine Del 8634***, this Court was examining a challenged by the University of Delhi to an order passed by the Controlling Authority under 1972 Act, whereby University was directed to pay gratuity with simple interest as per Section 7(3-A) of the 1972 Act. After examining Section 14 of the 1972 Act and following the judgments of the Supreme Court, Court dismissed the petition and upheld the right of the employee to gratuity. Relevant paragraphs are as follows:

“10. Before advertng to the facts of the present case, it is necessary to reproduce relevant Section 14 of the Payment of Gratuity Act, 1972 which reads as under:-

“14. Act to override other enactments, etc.—The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than



this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.”

11. *The Apex Court in ‘Allahabad Bank v. All India Allahabad Bank Retired Employees Association’, (2010) 2 SCC 44, observed as under:-*

“14. A plain reading of the provisions referred to hereinabove makes it abundantly clear that there is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

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31. No establishment can decide for itself that employees in such establishments were in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act.....

32. This Court in MCD v. Dharam Prakash Sharma [(1998) 7 SCC 221: 1998 SCC (L&S) 1800] observed:

“2. ... The mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect.....”

12. *In another case ‘Y.K. Singla v. Punjab National Bank’, (2013) 3 SCC 472, the Hon'ble Supreme Court of India had observed:-*

“22. A perusal of Section 14 leaves no room for any doubt that a superior status has been vested in the provisions of the Gratuity Act vis-à-vis any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term “instrument” and the phrase “instrument or contract having the force of law” shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant.”

13. *A similar question came up for consideration before this Court in W.P.(Civil) No. 5138/2014 titled as ‘University of Delhi v. Sharwan Kumar Gupta’ wherein it was held:-*



“16. The Payment of Gratuity Act, 1972 is a complete code in itself. It is clear from the law and the judgments mentioned above that Provisions of Payment of Gratuity Act, 1972 shall have overriding effect on all other provisions relating to Gratuity.

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18. If the contention of the petitioner is accepted that Delhi University Act, 1922 and State ordinances are statutory in nature, however, Section 14 of Payment of Gratuity Act, 1972, has overriding effect over the other Acts, Statutes and Regulations.

19. Admittedly, the petitioner has taken up the case for exemption under Section 5, which is pending with the Central Government, however, not granted to the petitioner till date. Therefore, in my considered opinion, till this exemption is not granted, the petitioner is governed by the provisions of this Act.

20. It is also admitted fact that the petitioner granted gratuity to some of its employees, after the order was passed by the Controlling Authority. If the plea of the petitioner is accepted that the respondent no. 1 in all the petitions are not entitled for gratuity under the Payment of Gratuity Act, 1972, then it tantamount to discrimination and inequality before Law, which violates Article 14 of the Constitution.

21. The Petitioner is an educational institution and employing more than 10 persons. The exemption under Section 5 of the Payment of Gratuity Act, 1972, has not yet been granted to it. The payment has already been made to some employees of the petitioner under the Payment of Gratuity Act, 1972”.

14. At this juncture, it is relevant to consider the provisions of sub Section 2 of Section 5 of the Payment of Gratuity Act, 1972 which reads as under:-

“5. Power to exempt.—

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[(2)] The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.]”



16. *In view of rejection of the prayer for exemption, the statutory provisions of the Payment of Gratuity Act, 1972 becomes applicable.*

17. *In the light of the aforesaid discussion, the petition is devoid of any merit. Accordingly, the petition is dismissed.”*

8. It is thus clear that the issue of the 1972 Act being applicable to University employees tested on the anvil of Statute 28-A of the University Statutes, was settled by this Court on 08.04.2015 by the aforesaid judgment and it cannot be argued that this position of law was unclear. Linking the payment of gratuity to NPS, in my view, was thus wholly irrelevant and as held by this Court in ***Ram Prakash (supra)***, by virtue of Section 14 of the 1972 Act, its provisions shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act or in any instrument or contract having effect by virtue of any enactment other than the 1972 Act.

9. It is not in dispute that gratuity has been paid to the Petitioner but was not paid when due. Petitioner retired on superannuation on 31.03.2018, while gratuity was released on 05.10.2023 and there is a delay of over 5 years. The limited issue that arises for consideration is interest on delayed payment of gratuity. It is no longer *res integra* that pension and gratuity are not the bounty of the State, but are valuable rights that vest in the retired employees. 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.

10. 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 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]”

11. 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 also 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.

12. 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. 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 *Niranjan 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;

“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.”

13. In **Dr. A. Selvaraj v. C.B.M. College and Others**, (2022) 4 SCC 627, the Supreme Court 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 Anr. v. Govt. of NCT of Delhi and Ors.**, W.P. (C) 1724/2017, decided on 21.08.2020 have allowed interest on retiral benefits.



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14. There is thus no doubt that Petitioner is entitled to interest on gratuity in view of the aforementioned judgments and this law would apply with a greater vigour in the present case, where Section 7 (3-A) itself provides that if the amount of gratuity payable under sub-Section (3) is not paid within 30 days from the date it becomes payable, employer shall pay, from the date the gratuity becomes payable to the date on which it is paid, simple interest at the rate not exceeding the rate notified by the Central Government from time to time. As per the notification the rate of interest is 10% per annum and therefore, in my view, University is liable to pay interest at the said rate to the Petitioner.

15. Accordingly, this writ petition is allowed to the limited extent that the University shall pay to the Petitioner statutory rate of interest as envisaged under 7(3-A) of 1972 Act from the date retirement gratuity became payable till the date of actual payment. The needful shall be done within 4 weeks from the date of receipt of this order.

16. Writ petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

NOVEMBER 4, 2024

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