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

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Date of Decision: 8th August, 2024

+ W.P.(C) 8895/2020

H K SHARMA

.....Petitioner

Through: Mr. Virendra Rawat, Advocate

versus

GOVT OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Gaurav Dhingra and Mr.
Shashank Singh, Advocates**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner seeking a limited relief of a direction to the Respondents to pay interest @ 10% per annum on arrears of gratuity of Rs.10 lacs from 01.03.2015 to 23.10.2019.
2. Brief facts necessary for adjudication of the present writ petition are that Petitioner was appointed as Principal of Shri Mahavir Vishwa Vidyapeeth, Paschim Vihar, Delhi, after approval of Directorate of Education (DoE). In 2012, an inquiry was conducted by the School into the experience certificate submitted by one Mrs. Asha Rani, a teacher in the School, who is also related to the Petitioner and some property disputes are ongoing in Haryana between the Petitioner and the father-in-law of Mrs. Asha Rani. After the inquiry, Asha Rani was removed from service and as a



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counterblast, she filed a complaint against the Petitioner for using vulgar language and threatening etc. including allegations of sexual harassment and consequently, FIR No. 41/2013 was registered under Sections 506/509 IPC, in which Petitioner was granted anticipatory bail.

3. It is averred in the petition that after a detailed departmental inquiry, an inquiry report was rendered by the IO on 23.04.2013 exonerating the Petitioner from the charge of sexual harassment at workplace. In 2014, Petitioner filed a petition in this Court being CRL.M.C. No.692/2014 under Section 482 Cr.P.C. for quashing of the FIR, which was allowed vide judgment dated 24.09.2018 and the FIR was quashed.

4. Petitioner avers that in the meantime, he superannuated on 28.02.2015 and requested for grant of retiral benefits. While provisional pension was granted to the Petitioner, other benefits were not granted on account of the pendency of the criminal case. This led to the Petitioner filing a writ petition in this Court being W.P.(C.) 4341/2016, which was allowed on 21.07.2017 directing the Respondents to release the Leave Encashment in accordance with Rules as the same was due on 28.02.2015, with interest @ 9% per annum computed from the date of retirement till the date of payment within 6 weeks.

5. It is further averred that after the FIR was quashed on 24.09.2018, Petitioner made a representation to the Respondents on 09.10.2018 requesting for release of the balance retiral benefits, pointing out that the FIR was quashed and along with the representation, he enclosed certified copy of the judgment, however, the benefits were not released. Constrained by the non-action of the Respondents, Petitioner filed W.P.(C.) 66/2019 on



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03.01.2019 seeking a direction for release of pensionary benefits including gratuity. Writ petition was disposed of on 08.01.2019 directing the Respondents to decide the representation dated 09.10.2018 within 4 weeks.

6. As per the Petitioner, when the representation was not decided, he filed a Contempt Petition bearing No.564/2019 on 26.06.2019. Respondents thereafter paid Rs.10 Lacs towards gratuity on 23.10.2019 but without interest on delayed payment, which as per Petitioner's calculation was Rs.5,57,667/-. When the representations did not yield any result, Petitioner filed the present writ petition.

7. Learned counsel for the Petitioner does not dispute receipt of the gratuity amount on 23.10.2019 but claims interest on the same on account of delay in payment for 4 years and 7 months under Sections 7 and 8 of the Payment of Gratuity Act, 1972. It is argued that gratuity is not the bounty of the employer and it is not open to the Respondents to hold on to the same for a prolonged period of nearly 5 years. Even assuming that Respondents were right in their action of not paying the gratuity amount during the pendency of the criminal case, there was no justification for not paying the gratuity once the FIR was quashed by this Court vide judgment dated 24.09.2018 in CRL.M.C. No.692/2014. As soon as the judgment was delivered, Petitioner had made a representation to the Respondents on 09.10.2018 bringing to their notice the quashing of the FIR and had also enclosed certified copy of the judgment and therefore, it was clearly within their knowledge that the FIR had been quashed and criminal trial had ended. Thereafter, this Court had also directed the Respondents on 08.01.2019 to dispose of the representation within 4 weeks but the Respondents waited till 23.10.2019 to



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release the gratuity and are clearly liable to pay interest on delayed payment.

8. Mr. Gaurav Dhingra, learned counsel appearing on behalf of the Respondents, *per contra*, submits that there is no delay in payment of the gratuity to the Petitioner. Relying on DoPT O.M.s dated 11.07.1979 and 22.01.1991, it is urged that in case a Government servant, against whom disciplinary/judicial proceedings are pending, is exonerated of all charges and gratuity is paid on conclusion of such proceedings, payment of gratuity will be deemed to have fallen due on the date following the date of retirement. However, in the present case though this Court quashed the FIR but it cannot be said that Petitioner was fully exonerated on conclusion of a criminal trial and therefore, the second part of the O.M. will be attracted which stipulates that if the Government servant is not fully exonerated on conclusion of disciplinary/judicial proceedings and where the Competent Authority decides to allow payment of gratuity, payment of gratuity will be deemed to have fallen due on the date of issuance of order by the Competent Authority. In such a case, interest will be payable for the period of delay beyond 3 months from the date of issue of the order of the Competent Authority. Therefore, as per the counter affidavit, payment of gratuity will be deemed to have fallen due on 24.09.2018 when the petition was allowed or thereafter and not from 28.02.2015 as contended by the Petitioner and interest liability cannot be imposed. Moreover, interest is a penalty and since Respondents were not aware of the quashing of the FIR till the filing of W.P.(C.) 66/2019, which was disposed on 08.01.2019, they cannot be saddled with the interest liability.

9. Heard learned counsels for the parties and examined their rival



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10. Indisputably, FIR was registered against the Petitioner under Sections 506/509 IPC, which was quashed by this Court vide judgment dated 24.09.2018 in CRL.M.C. No.692/2014. Petitioner superannuated from service 28.02.2015 and it is from this date that he sought payment of gratuity. As per the Respondents, gratuity was payable only once the FIR was quashed and not during the pendency of the criminal proceedings and to this extent, the stand of the Respondents is legally correct and justified. Rule 69(1)(c) of CCS (Pension) Rules, 1972 provides that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. Therefore, as per law, gratuity became payable to the Petitioner from 24.09.2018 when the FIR was quashed.

11. As per the Petitioner, he made a representation to the Respondents on 09.10.2018 intimating that the FIR had been quashed enclosing certified copy of the judgment. Respondents dispute this fact and take a stand that they gained knowledge of the quashing of the FIR only when the writ petition being W.P.(C.) 66/2019 was filed by the Petitioner on 03.01.2019, seeking a direction for disposal of the representation and release of his retiral benefits. This stand of the Respondents is not correct for the reason that Petitioner has placed on record the representation dated 09.10.2018 as Annexure P-12 which shows that one Rajender had received the representation on the same day in the office of Deputy Director of Education (Zone-17) and his signature appears in acknowledgement. There is no rebuttal to this document in the counter affidavit. Be that as it may, even by



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their own admission, Respondents had knowledge of quashing of the FIR on 03.01.2019, when the writ petition was filed and therefore, there is a delay in payment of gratuity till 23.10.2019.

12. The issue before this Court in this writ petition is in a narrow compass, i.e. whether Petitioner is entitled to interest on delayed payment of gratuity. The argument of the Respondents that Petitioner was not fully exonerated and therefore, even if payment of gratuity was delayed, interest will be payable for the period of delay beyond 3 months from the date the Competent Authority issued the order for grant of gratuity, cannot be accepted and is predicated on a flawed understanding of the Respondents that Petitioner was not fully exonerated only because the FIR was quashed by this Court under Section 482 Cr.P.C. and he did not undergo a full-fledged criminal trial. There is no gainsaying that this Court had quashed the FIR only because the allegations were not made out and the case was not worthy of proceeding for trial. Therefore, the reliance on the DoPT O.Ms. to the extent applicable to cases where Government servant is not fully exonerated is misplaced and Petitioner cannot be denied interest on delayed payment of gratuity.

13. It is no longer *res integra* that an employer shall be liable to pay interest on retiral benefits released belatedly. In ***D.D. Tewari (Dead) Through Legal Representatives v. Uttar Haryana Bijli Vitran Nigam Limited, (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 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]”

14. 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.

15. 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. State of West Bengal*, (2012) 1 WBLR (Cal) 903, this court relying on *Aloke Shanker Pandey v. Union of India*, (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, (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. State of West Bengal, (2007) 3 CLT 531.”

16. 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***



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Enterprises and Anr., 2017 SCC OnLine Del 10760 and H.N. Sharma v. Govt. of NCT of Delhi, W.P. (C) 1724/2017, decided on 21.08.2020 have allowed interest on retiral benefits.

17. In the present case, there is clearly a delay on payment of gratuity to the Petitioner. As noted above, Respondents take a stand that they were not aware of the judgment of this Court, whereby FIR was quashed till 03.01.2019 when W.P.(C.) 66/2019 was filed, which is refuted by the Petitioner. However, to put a quietus to the litigation, counsel for the Petitioner, on instructions, submits that Petitioner would be satisfied if interest is paid from 03.01.2019 till 23.10.2019.

18. In view of the catena of judgments referred to above, Petitioner is entitled to interest on delayed payment of gratuity. Accordingly, this writ petition is allowed directing the Respondents to pay simple interest @ 8% per annum to the Petitioner on the gratuity amount of Rs.10 lacs w.e.f. 03.01.2019 till 23.10.2019. The interest shall be paid within a period of 8 weeks from today.

19. Petition stands disposed of.

JYOTI SINGH, J

AUGUST 08, 2024/kks