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

\+ W.P.(C) 14576/2024

PROF. BHARTI HARNAL .....Petitioner

Through: Mr. Bajrang Vats, Advocate.

versus

SATYAWATI COLLEGE (MORNING) .....Respondent

Through: Mr. Mayank Yadav, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% **18.10.2024**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking a direction to the Respondent college to pay interest @ 10% per annum on delayed payment of gratuity of Rs.20 Lacs for a period of 07 months and 18 days i.e. 31.05.2022 till 17.01.2023.

2. Petitioner was appointed as Lecturer on 22.01.1996 in the Department of Commerce in Satyawati College on *ad hoc* basis on recommendation of duly constituted Selection Committee. His services were regularised w.e.f. 16.11.2006 and she retired on superannuation on the post of Professor on 31.05.2022. Retirement gratuity of Rs.20 lacs to which the Petitioner was entitled immediately on retirement under the Payment of Gratuity Act, 1972 ('1972 Act') was paid belatedly on 18.01.2023, compelling the Petitioner to approach this Court for interest on delayed payment.

3. Learned counsel for the Petitioner submits that Petitioner was entitled to payment of gratuity at the enhanced rate of Rs.20 Lacs on 31.05.2022, the date of superannuation, however, the same was paid only on 18.01.2023. It is argued that under Section 7(3A) of the 1972 Act, as amended, if the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified under sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify. Sub-Section (3) of Section 7 of the Act provides that the employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

4. Learned counsel places reliance on the judgment of Coordinate Bench of this Court in ***University of Delhi vs. Raja Singh and Ors., 2015 SCC OnLine Del 9658***; and the judgment of this Court in ***Dr. Raisa Parveen vs. Principal, Satyawati College Morning (Delhi University) and Others, 2024 SCC OnLine Del 4854***, wherein relying on several judgments of the Supreme Court, this Court had granted 8% simple interest to the Petitioner therein on account of delayed payment of retirement gratuity.

5. Learned counsel for Respondent, on the other hand, submits that the College cannot be blamed for delay as it was the University which was to make payment. He also submits that NPS was made applicable to the University employees only from 30.01.2023 and soon after intimation was received, gratuity was released and thus College should not be saddled with penal interest. This is apart from the objection that University has not been

impleaded as a party in the present writ petition.

6. Having heard learned counsels for the parties, this Court is of the view that there is no merit in the contention raised by the College that gratuity was not paid on time since NPS was made applicable to the University employees only w.e.f. 30.01.2023. In my opinion, this defence is wholly irrelevant to the payment of gratuity. In ***Raja Singh (supra),*** this Court held that the 1972 Act was applicable to the Delhi University and had an overriding effect on Statute 28A of Delhi University Statutes. Once the applicability of 1972 Act to University employees was decided in 2015, there was no cause for the College to delay the payment of gratuity to the Petitioner on the frivolous ground that it was under a dilemma whether NPS was applicable or not.

7. It is also no longer *res integra* that when there is delay in payment of retiral dues to retired employees for no fault of theirs, they will be entitled to interest on delayed payments. 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 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 antequated 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.

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.*
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> ***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;*
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> > *"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. This principle applies with greater vigour in the present case where Section 7(3A) of the 1972 Act itself provides that if the amount of gratuity payable under Section 7(3) is not paid by the employer within 30 days from the date it becomes payable to the employee, simple interest at such rate not exceeding the rate notified by the Central Government shall be paid.

11. In the present case, Petitioner retired on superannuation on 31.05.2022 and retirement Gratuity was paid to her on 18.01.2023 for no fault of hers. In view of the aforesaid discussion, Petitioner has made out a case for grant of interest on delayed payment of retirement Gratuity and it is directed that Respondent 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 eight weeks from the date of receipt of this order.

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

JYOTI SINGH, J

OCTOBER 18, 2024

B.S. Rohella/shivam