

**A.F.R.**

Court No. - 9

Case :- WRIT - A No. - 27102 of 2013

Petitioner :- Sarvajeet Singh

Respondent :- State Of U.P.& 3 Ors.

Counsel for Petitioner :- N.L.Srivastava

Counsel for Respondent :- C.S.C.

**Hon'ble Mahesh Chandra Tripathi,J.**

1. Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

2. By means of present writ petition, the petitioner has prayed for direction in the nature of mandamus commanding the respondent no.2 to pay 10% interest per annum to him from 01.7.2010 to the date of actual payment i.e. 11.11.2012 on the amount of Rs.8,52,837/-.

3. It appears from the record that the petitioner was appointed as Tubewell Operator on 24.5.1977 in the office of respondents. He retired after attaining the age of superannuation on 30.6.2010. He received the payment of provident fund just after his retirement. The respondents had not made payment of other retiral benefits like pension, gratuity, computation of pension etc to the petitioner. On 22.10.2012 he made a representation before the respondent no.2 for payment of retiral dues. The respondent no.2 sent a letter on 2.11.2012 to the Chief Treasury Officer, Allahabad-respondent no.4 directing him to pay the retiral benefits to the petitioner. The respondent no.4 gave a cheque of Rs.8,52,837 to the petitioner on 29.10.2012. Thereafter the petitioner made a representation before respondent no.2 on 12.12.2012 for payment of interest on the delayed payment of retiral benefits from 1.7.2010 to 11.11.2012, which is still pending.

4. Learned counsel for the petitioner submits that the petitioner is legally entitled to receive payment of entire retiral benefits on the date of retirement. The respondents did not pay the entire retiral benefits to him on the date of retirement and they paid the retiral benefits amounting to Rs.8,52,837/- after more than two years and four months. Therefore, the petitioner is entitled to get interest @ 10% per annum from 01.7.2010 to the date of actual payment i.e. 11.11.2012 on the aforesaid amount. The respondents have delayed the payment of retiral benefits willfully and deliberately. After receiving the representation dated 12.12.2012, the respondent no.2 neither paid the interest nor have passed any order

on the representation of the petitioner till date. The respondent no.2 did not perform his legal and statutory duty, which is vested in him. The action of the respondent no.2 is illegal, arbitrary and bad in law and against the principles of natural justice.

5. Learned counsel for the petitioner has relied upon the judgments of the Supreme Court in **State of Kerala & Ors. Vs. M. Padmanabhan Nair**, AIR 1985 SC 356; **O.P. Gupta Vs. Union of India & Ors.**, 1987 UPLBEC 583 (SC); **R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Anr.**, (1995) 1 UPLBEC 89; **S.R. Bhanrale Vs. Union of India and ors.**, AIR 1997 SC 27; **Dr. Uma Agrawal Vs. State of U.P. & Anr.**, (1999) 2 UPLBEC 1006 (SC); **Vijay L. Mehrotra vs. State of UP and others** (2000) 2 UPLBEC 1599 and **Gorakhpur University & others vs. Dr. Shitla Prasad Nagendra and others** 2001 ALL. L. J. 2026; **S.K. Dua Vs. State of Haryana & Anr.**, (2008) 1 UPLBEC 301 and the judgments of Punjab and Haryana High Court in **A.S. Randhawa Vs. State of Punjab & Ors.**, 1998 (1) ESC 735 (P&H); the Division Bench judgment of this Court dated 11.8.2008 in **Writ Petition No.5667 of 2001, Smt. Kavita Kumar Vs. State of U.P. & Ors.** in support of the submission that the High Court under Article 226 of the Constitution of India, has ample powers to be exercised in appropriate and deserving cases to award interest, in cases of inordinate delay, attributable wholly to the employer in settling the retrial dues.

6. Learned Standing Counsel, on the other hand, submits that the petitioner was working as Tubewell Operator in Nalkoop Khand, Irrigation Department, Allahabad. He was sent on deputation to Panchayati Raj Department pursuant to Government Order dated 12.4.1999 and was posted as Gram Panchayat Vikas Adhikari, Vikas Khand Saidabad, Allahabad. He was transferred back to his parent department on 28.7.2005. While working as Tubewell Operator, he retired on 30.6.2010 on attaining the age of superannuation. During the period from September, 2004 to July, 2005, when he was posted as Gram Panchayat Vikas Adhikari, he had withdrawn the fund for construction of Kisan Market but the construction work was not completed. Therefore, by the order dated 8.3.2006 the District Magistrate, Allahabad directed recovery of Rs.1,50,000/- from the petitioner. Against the order of recovery, the petitioner filed a Writ Petition No.15476 of 2007, in which an interim order was passed on 22.3.2007 staying the recovery with condition that the petitioner shall deposit a sum of Rs.5000/-. In compliance with the interim order, the petitioner

deposited Rs.5000/-. The said writ petition is still pending. The petitioner did not fill up the pension papers after his retirement and had not fulfilled the requisite formalities for sanction of pension, gratuity etc. On 7.7.2010 he was asked to submit the pension papers after completing the requisite formalities. He moved an application on 25.8.2010 requesting that his pay scale be fixed by giving him benefits of ACP as per VIth Pay Commission. The pay scale of the petitioner was fixed on 5.10.2010 by giving him benefit of ACP on completion of 26 years. Since the petitioner did not deposit Rs.1,50,000/- and the matter was subjudiced in Writ Petition No.15476 of 2007, therefore, the Executive Engineer, Nalkoop Khand, Allahabad requested the Additional Director, Treasury and Pension, Allahabad on 30.8.2011 to release the pension, gratuity etc. after withholding the amount of Rs.1,50,000/-. The respondent no.3 sanctioned the pension and gratuity of the petitioner on 26.9.2011 by withholding an amount of Rs.1,50,000/-. For sanction of post retiral benefits, the petitioner was required to be present before the Treasury Officer for verification but he did not approach the respondent no.4 for his personal verification. On the representation of the petitioner dated 22.10.2012 the Executive Engineer, Nalkoop Khand, Allahabad requested the Treasury Officer, Allahabad on 2.11.2012 for payment of retiral dues of the petitioner. The petitioner appeared before respondent no.4 on 22.10.2012. The verification was made on the same day and an amount of Rs.8,52,837/- was sanctioned. The petitioner himself did not approach the office of respondent no.4 for physical verification, therefore, for the delay in releasing the post retiral dues, the respondents are not responsible. The petitioner himself is responsible for the delay in sanction of post retiral dues and despite several letters and reminders, he did not approach the office of respondent no.4 for physical verification.

7. Since the date of retirement is known to the respondents well in advance, there is no reason for the respondents not to make arrangement for payment of retiral benefits to the employee well in advance so that as soon as he retires, his retiral benefits are paid on the date of retirement or within reasonable time thereafter. Inaction and inordinate delay in payment of retiral benefits is nothing but culpable delay warranting liability of interest on such dues.

8. In the case of **State of Kerala Vs M Padmanabhan Nair and Som Prakash (1985) 1 SCC 429**, the Supreme Court held as follows:

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the

decisions of this Court, valuable rights and property in their hands 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."

9. In a more recent decision in **D D Tewari Vs Uttar Haryana Bijli Vitran Nigam Ltd (2014) 8 SCC 894**, the Supreme Court observed that any culpable delay in settlement and disbursement thereof is to be visited with penalty of payment of interest. Hence, interest @ 9% on delayed payment was awarded to be paid within six weeks failing which interest @ 18% p.a. would need to be paid. An erroneous withholding of gratuity amount to which the employee is legally entitled, entails penalty on the delayed payment

10. In this view of the matter, this Court is of the view that the claim of the petitioner for interest on the delayed payment of retiral benefits has to be sustained and it is a fit case where the writ petition is liable to be allowed.

11. Normally this Court in exercise of its equitable discretion does not settle the State with civil liability unless the Court is satisfied that the helpless employee had been compelled to litigate for his survival for more than two years and the action of the respondent State Government and its officers is found to be wholly arbitrary, unreasonable and malicious in non finalization of the retiral to the petitioner in time.

12. The Court may add here that after serving the qualifying period of service, the employee does not ordinarily have any other means of livelihood, when he needs them more other than his dues. It is extremely unjust and harsh to allow a retired employee to wait to receive the dues, and to depend upon his friends, relatives and children. The right to receive retiral dues/ terminal dues is closely linked to his right of self-respect, and human dignity, which is included in right to life guaranteed by Article 21 of the Constitution of India.

13. Accordingly, this writ petition is **allowed**. The respondents are directed to calculate and pay to the petitioner interest on the delayed payment of the retiral benefits amounting to Rs.8,52,837/- from 01.7.2010 to the date of actual payment i.e. 11.11.2012 @ 10% simple per annum. The required calculation shall be made within two months, and the interest shall be paid to him within one month thereafter.

Order Date :- 8.4.2015 RKP