
Ram Bilash Singh Vs State Of Bihar And Ors

Civil Writ Jurisdiction Case No. 1628 Of 2019

Court: Patna High Court

Date of Decision: Dec. 10, 2020

Acts Referred:

Payment Of Gratuity Act 1972 " Section 7, 7(2), 7(3), 7(3)(A), 8, 9#Constitution Of India, 1950 " Article 12, 14, 19, 21, 32, 148, 226, 300A

Hon'ble Judges: Ahsanuddin Amanullah, J

Bench: Single Bench

Advocate: Ramakant Sharma, Lakshmi Kant Sharma, Bijay Bhushan Prasad, Anjani Kumar, Ashhar Mustafa, Rashid Izhar

Final Decision: Disposed Of

Judgement

1. The matter has been taken up via video-conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Ramakant Sharma, learned senior counsel along with Mr. Lakshmi Kant Sharma, learned counsel for the petitioner; Mr. Bijay Bhushan

Prasad, learned Assistant Counsel to Standing Counsel 13 for the State; Mr. Anjani Kumar, learned senior counsel along with Mr. Ashhar Mustafa,

learned counsel for the Tilka Manjhi Bhagalpur University (hereinafter referred to as the "University"); and Mr. Rashid Izhar, learned counsel

for the Munger University.

3. The petitioner has moved the Court for the following reliefs:

"...for issuance of a writ/writs, order/orders/ direction/ directions in the nature of mandamus commanding the respondent authorities for making

immediate payment of all retiral dues of the petitioner which has been withheld illegally, such as, group insurance, leave encashment, employee's

welfare fund, benefit of ACP/MACP and arrears of salary after pay fixation, difference of arrears of pension and part of gratuity, which have not

been paid to the petitioner with admissible interest and only pension amount has been paid with effect from 01.10.2009 and part of gratuity.

Petitioner further seeks indulgence of this Hon'ble Court for which he is found entitled in the eyes of law and in the facts and circumstances of

the present case.

4. On 11.11.2020, the matter was adjourned in the following terms:

3. Learned counsel for the petitioner submitted that, as of now, admissible dues of the petitioner have been paid. However, it was contended that

the petitioner superannuated in the year 2009 and payments have been made after a decade and, thus, the Court may award interest for such delay.

4. On such plea, learned counsel for T M Bhagalpur University, for taking instructions with regard to delay caused in payment, prayed for a short

adjournment. In view thereof, as prayed for by learned counsel for T M Bhagalpur University, the matter be listed on 10th December, 2020, among

the top five cases.

5. Today, learned counsel for the University submitted that a second supplementary counter affidavit, bringing on record factual aspects relating to

payments made to the petitioner of his admissible dues, had been filed. He drew the attention of the Court to paragraphs no. 5 and 6 of the said

affidavit, which read as under:

5. That in compliance of order dated 11.11.2020 passed by this Hon'ble Court, the respondent University is furnishing following facts on the

point of delay in making payments to the Petitioner, to assist this Hon'ble Court to reach at a reasoned conclusion.

a. That Sri Ram Bilash Singh, the petitioner herein, had superannuated from his service on 30.09.2009.

b. That subsequent to the retirement of the petitioner, the service book of the petitioner for fixation of pension was sent to the University, on

17.04.2013 which was received by the University on 24.04.2013.

c. That the payment of pension and gratuity of the petitioner was started with effect from January, 2014.

d. That the regulation regarding extending of benefits of ACP /MACP was issued by the Governor's Secretariat vide letter bearing No. Memo

B.A.U41/2013-429/Ra San (1) dated 04.03.2014.

e. That it is further stated that after issuance of regulation by the Governor Secretariat, Patna, the case of the petitioner along with other employees

was put before the Screening Committee and thereafter pursuant to its recommendation, the file of the petitioner along with other employees were

processed for issuance of notification/office order.

f. That it is submitted that subsequent to this, direction with respect to extending of benefit of ACP/MACP to the petitioner and other employees was

issued vide office order No.242/18 dated 28.02.2018.

g. That after the approval by the Pay Fixation Committee of the University, the pay fixation of the petitioner was done.

h. Finally the payment of difference of pension, gratuity, salary and other retiral dues were made to the petitioner by the respondent university after

following due process.

6. That it is submitted with humility that the delay in payment is essentially in the aforesaid background and, as such, the Respondent University has

not caused any deliberate delay in making the payment of benefits of ACP/MACP and other retiral benefits. Since the delay, as outlined above, was

on account of necessary procedural compliance mandated in the statute, the conduct of the Respondent University may kindly be considered with

compassion.

6. At this juncture, he also took the Court to paragraph no. 4 of the first counter affidavit filed on behalf of the University, which discloses the dates on

which payments were made which is reproduced hereunder:

4. That the respondent University at this stage without giving parawise reply of the writ petition, is hereby bringing on record the details of the

payments made to the petitioner under different heads.

a. Group Insurance: An amount of Rs. 7,548/- has been paid to the petitioner under the head of GIC vide cheque no.215869 dt. 06.05.2015. Nothing

remains due under this head.

b. Employees Welfare Fund: An amount of Rs.538/- has been paid to the petitioner vide cheque no. 077276 dt. 15.08.2020. Nothing remains due under

this head.

c. Leave Encashment: A total of 188 days were sanctioned as earned leave vide office order no. 186/2019 which after encashment amounted to

Rs.1,03,305/-. The same has been paid to the petitioner vide cheque no. 038059 dt. 15.04.2019. Nothing remains due under this head now.

d. Pension: The pension of the petitioner has been fixed at Rs.7,660/- with other admissible benefits and the same are already being paid to the

petitioner. The aforesaid pension amount has been fixed after granting the petitioner the benefit of ACP/MACP.

e. Gratuity: A total amount of Rs.3,55,772/- was found admissible under this head. Out of the same. Rs.2,85,433/- was paid to the petitioner vide

cheque no. 004504 on 06.01.2014 and the remaining amount of Rs.70,339/- was then paid to him on 04.08.2019 vide cheque no.038142. Nothing

remains due under this head.

f. Arrears of pension: A total amount of Rs.3,69,440/- was found due under this head after granting the benefit of ACP/MACP for the period

October, 2009 to February, 2018. Out of which Rs.37,000/- was deducted and paid towards income tax vide cheque no.038236 dt. 16.01.2020.

Outstanding amount of Rs.3,32,440/- has been paid to the petitioner vide cheque no. 038235 dt. 16.01.2020. Further, an amount of Rs.57,294/- was

found admissible under this head for the period March, 2018 to July, 2019, the same too has been paid to the petitioner through treasury on 16.08.2020.

Nothing remains due under this head now.

g. Arrears of Salary: An amount of Rs.2,16,647/- was found admissible and was paid to the petitioner under this head for the period March, 1989 to

September, 2009 vide cheque no.021261 dt. 16.08.2020. It is important to mention here that since anomaly was found in the claim of the petitioner for

the month of July, 2001 and September, 2001 to February, 2002, fresh claim statement was asked to be furnished from the concerned college where

the petitioner was employed, which is yet to be received. In this regard, several communications have been made to the Principal, KSS College,

Lakhisarai, including letters dt. 23.06.2020 and 09.09.2020. The respondent University hereby undertakes that as soon as the fresh claim statement for

the aforesaid months is received from the concerned college, the payment shall be made within a week thereafter.

Copies of letters dt. 23.06.2020 and 09.09.2020 are annexed herewith and marked as Annexure- A series to this Counter Affidavit. ~~Ã¢â¬â¢~~

7. Learned counsel for the University submitted that once payments have been made, the Court would take a compassionate view against the

University as, ultimately, the payment has to be made from public exchequer and it is very difficult for the guardian to collect the money and very easy

for the dependents to spend. In effect, the submission urged was that the payment of interest ought to be avoided in the present case, as it would

unnecessarily further burden the already strained finances of the University.

8. Learned counsel for the University, on merits, submitted that if the Court goes through the relief claimed by the petitioner as stated in paragraph

no.1 of the writ petition, it would transpire that the petitioner himself has asked for payment of only the ~~Ã¢â¬â¢~~admissible interest ~~Ã¢â¬â¢~~. Thus, it was

contended that the Court may not go beyond what has been specifically prayed for by way of relief by the petitioner.

9. At this stage, on a query of the Court as to what was his stand if he was emphasizing the word ~~Ã¢â¬â¢~~admissible interest ~~Ã¢â¬â¢~~, learned counsel

submitted that under various heads, for example gratuity and provident fund, the statutes governing payment of the same itself provide for up-to-date

interest. Learned counsel submitted that the writ Court may travel beyond the relief where there was no positive law on the issue, and in such a

situation, the principles of justice, equity and good conscience may be invoked by the Court. He submitted that such doctrine has been elaborately dealt

with by the Hon~~Ã¢â¬â¢~~ble Supreme Court, recently, in M. Siddiq (Ram Janmabhumi Temple-5 J) v Suresh Das, (2020) 1 SCC 1, the relevant being at

paragraphs no. 653 to 673.

10. Per contra, the learned counsel for the petitioner submitted that the relief sought for by the petitioner, as stated in paragraph no.1 of the writ

petition, is complete in itself and there is no ambiguity. Learned counsel submitted that the relief claimed is not contrary to the claim for interest on

delayed payments for the reason that the petitioner has also sought the indulgence of the Court to obtain relief which he may be found entitled to, in

the eyes of law and in the facts and circumstances of the case, by the Court. It was submitted that when the Court reaches a conclusion that there

has been an inordinate delay for which the petitioner was nowhere responsible, then it is open for the Court to exercise its prerogative and

extraordinary jurisdiction, which is also discretionary, under Article 226 of the Constitution of India. Learned counsel further submitted that on the own

showing of the University, which the Court has referred to above, there is not even a whisper with regard to any laches or even contributory laches on

the part of the petitioner, as in the counter affidavits of the University, only dates have been mentioned, but without any reason assigned or explanation

offered as to why such payments were delayed. Learned counsel submitted that as an employee, having worked under the University, the petitioner

was in greater need of financial support in the evening of his life, having superannuated. He concluded that, in the present case, the dues having been

paid after a long period has already made him suffer from untold hardship. It was further submitted that the Courts have been consistent in awarding

interest for delayed payment of retiral dues.

11. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court at the outset would deal

with the objection of learned counsel for the University with regard to the Court not being required to go beyond the actual relief sought. Such

principle, cannot be said to be sound, for the sole reason that there is no scope of any ambiguity or confusion with regard to the width and amplitude of

the jurisdiction and authority of a writ Court while exercising power under Article 226 of the Constitution of India, which is prerogative, extraordinary

and discretionary.

12. It is apt to note the words of the Hon'ble Supreme Court in *Benedict Dennis Kinny v Tulip Brian Miranda*, 2020 SCC OnLine SC 802:

“20. We need to first notice the nature and extent of the jurisdiction of the High Court under Article 226 of the Constitution of India. The power of

judicial re-view vested in the High Courts under Article 226 and this Court under Article 32 of the Constitution is an integral and essential feature of

the Constitution and is basic structure of our Constitution. The jurisdiction under Article 226 is original, extraordinary and discretionary. The look out

of the High Court is to see whether injustice has resulted on account of any decision of a constitutional authority, a statutory authority, a tribunal or

an authority within meaning of Article 12 of the Constitution. The judicial review is designed to prevent cases of abuse of power or neglect of a duty

by the public authority. The jurisdiction under Article 226 is used for enforcement of various rights of the public or to compel public/statutory au-

thorities to discharge the public functions entrusted on them. The Courts are guardians of the rights and liberties of the citizen and they shall fail in

their responsibility if they abdicate their solemn duty towards the citizens. The scope of Article 226 is very wide and can be used to remedy injustice

wherever it is found. The High Court and Supreme Court are the Constitutional Courts, which have been conferred right of judicial review to protect

the fundamental and other rights of the citizens

(emphasis supplied)

13. It is no longer res integra that the High Court is well within its powers to mould the relief, which, ultimately, it may grant to any party. Reference in

this regard may gainfully be made to State of Rajasthan v Hindustan Sugar Mills Ltd., (1988) 3 SCC 449, wherein it was held that the High

Court was exercising high prerogative jurisdiction under Article 226 and could have moulded the relief in a just and fair manner as required by the

demands of the situation

14. It is apt to note the following from B.R. Ramabhadriah v Secretary, Food and Agriculture Department, (1981) 3 SCC 528:

5. It is true that the writ petition contained a prayer for the quashing of the gradation list insofar as it related to the inter se ranking of the petitioner

vis-à-vis Respondents 3 to 8 and the petitioner (appellant) had also sought the issuance of a writ of mandamus directing Respondents 1 and 2 to

forbear from implementing or acting upon the said gradation list. But, subsequent to the institution of the writ petition, the Central Government had

refixed the ranks of Respondents 3, 4, 5, 7 and 8 (Telangana Officers) and placed them below the appellant thereby redressing the grievance of the

appellant insofar as it pertained to the ranking of the aforesaid respondents. It therefore became unnecessary for the appellant to pursue his claim for

relief with respect to the ranks assigned to those five respondents. It was under those circumstances that the appellant submitted before the learned

Single Judge of the High Court, at the time of final hearing of the writ petition, that he was pressing the writ petition only insofar as it related to his

claim for seniority over Respondent 6. We fail to see how the fact that the appellant had sought in the writ petition the issuance of a writ of

mandamus directing Respondents 1 and 2 to forbear from implementing or acting upon the provisional gradation list will operate to preclude him from

seeking a lesser relief, namely, the quashing of the list only insofar as it pertains to the fixation of the inter se seniority between himself and

Respondent 6. The material facts and circumstances had undergone a substantial change subsequent to the filing of the original petition and it was in

consequence thereof that it had become unnecessary for the petitioner to pursue his original prayer for the grant of a larger relief. Besides ignoring

this crucial aspect, the Division Bench of the High Court has also lost sight of the well-established principle that in an action where a party has prayed

for a larger relief it is always open to the Court to grant him any smaller relief that he may be found to be entitled in law and thereby render

substantial justice. The Court can undoubtedly take note of changed circumstances and suitably mould the relief to be granted to the party concerned

in order to mete out justice in the case. As far as possible the anxiety and endeavour of the Court should be to remedy an injustice when it is brought

to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds. We do not, therefore, find it possible to

uphold the view expressed by the Division Bench of the High Court that since the writ petition was not pressed insofar as it related to the officers

belonging to the Telangana region the question of inter se seniority between the writ petitioner and Respondent 6 should not have been considered by

the Single Judge and the writ petition should have been dismissed. ”

(emphasis supplied)

15. However, as an objection on such lines had been raised, which appeared to be a hyper-technical point, at the cost of repetition, the Court would

only indicate that besides the petitioner having also prayed for grant of any further relief to which he is found entitled in the eye of law and in the facts

and circumstances of the present case, in the very first paragraph, even at the closing of the writ petition, it has been prayed that the Court may pass

such other order or orders as it may deem fit and proper. Thus, even on technicalities, the Court does not find any shortcoming in the writ petition or

the pleadings therein, which can prove fatal to the claim of interest on delayed payment. Moreover, the Court would clarify, that in matters relating to

payment of retiral benefits, award of interest on delayed payment would form an integral part of the relief, even if no separate relief is

claimed/pleaded for the same, as only after the Court takes a view with regard to the role of the parties concerning any inordinate delay in payment,

obviously, only thereafter would the necessary consequences in law flow, including a decision on the issue of payment of interest.

16. The Court need not repeat the admitted factual aspects, which are clearly spelt out in the affidavits of the University itself, and partly quoted

above.

17. In *D.S. Nakara v Union of India*, (1983) 1 SCC 305, a Constitution Bench of the Hon’ble Supreme Court held:

“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 55 7w] 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]

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22. In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability. State obligation to provide

security in old age, an escape from undeserved want was recognised and as a first step pension was treated not only as a reward for past service but

with a view to helping the employee to avoid destitution in old age. The quid pro quo was that when the employee was physically and mentally alert, he

rendered unto master the best, expecting him to look after him in the fall of life. A re-tirement system therefore exists solely for the purpose of

providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal re-tirement receives the same amount (see

Retirement Systems for Public Employees by Bleakney, p. 33).

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29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a

broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental

pro prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give

your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been

judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from

service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a

deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the

inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

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31. From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer

and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by

the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the

past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly

toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a

certain percentage correlated to the average emoluments drawn during last three years of service reduced to 10 months under liberalised pension

scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of

the contract of service and that it can be reduced or withdrawn as a disciplinary measure.Ã¢â¬â¢

(emphasis supplied)

18. In *State of Kerala v M. Padmanabhan Nair*, (1985) 1 SCC 429, the HonÃ¢â¬â¢ble Supreme Court observed:

Ã¢â¬â¢1. 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 dis-burserment thereof must be visited

with the penalty of payment of interest at the current market rate till ac-tual payment.

2. Usually the delay occurs by reason of non-produc-tion of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the

concerned Depart-ments but both these documents pertain to matters, records whereof would be with the concerned Gov-ernment Departments.

Since the date of retirement of every Government servant is very much known in ad-vance we fail to appreciate why the process of collect-ing the

requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment

of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following

month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retire-ment cannot be over-

emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence

at the expiry of two months from the date of retirement.Ã¢â¬â¢

(emphasis supplied)

19. In *S.K. Dua v State of Haryana*, (2008) 3 SCC 44, the HonÃ¢â¬â¢ble Supreme Court opined:

Ã¢â¬â¢14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant ap-pears 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 pay-ment of interest relying on such rules.

If there are ad-ministrative instructions, guidelines or norms pre-scribed for the purpose, the appellant may claim ben-efit of interest on that basis. But

even in absence of statutory rules, administrative instructions or guide-lines, 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 coun-sel for the appellant, that retiral benefits are not in the nature of

Ã¢â¬â¢bountyÃ¢â¬â¢ 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.Ã¢â¬â¢

(emphasis supplied)

20. Additionally, in *State of Jharkhand v Jitendra Kumar Srivastava*, (2013) 12 SCC 210, noticing D.S. Nakara (supra), it was held that gratuity, as

also pension, was Āĉhard earned benefit which accrues to an employee and is in the nature of Āĉ“propertyĀĉ. This right to property cannot be taken

away without the due process of law as per the provisions of Article 300-A of the Constitution of India.Āĉ

21. At this juncture, it is appropriate to refer also to the judgment in D.D. Tewari v Uttar Haryana Bijli Vitran Nigam Limited, (2014) 8 SCC 894

wherein, from the date of entitlement till the date of payment, the HonĀĉble Supreme Court proceeded to award interest @ 9% per annum, both on

the amount of pension due and the gratuity amount. The relevant portion thereof reads:

Āĉ6. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31-10-2006 and the order of the learned

Single Judge after adverting to the relevant facts and the le-gal position has given a direction to the respondent employer to pay the erroneously

withheld pensionary benefits and the gratuity amount to the legal repre-sentatives of the deceased employee without awarding interest for which the

appellant is legally entitled, therefore, this Court has to exercise its appellate ju-risdiction as there is a miscarriage of justice in deny-ing the interest to

be paid or payable by the employer from the date of the entitlement of the deceased em-ployee till the date of payment as per the aforesaid le-gal

principle laid down by this Court in the judgment referred [(1985) 1 SCC 429 : 1985 SCC (L&S) 278] to supra. We have to award interest at the rate

of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respon-dent.

7. It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled in

law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gra-tuity Act, 1972. Having regard to the

facts and cir- cumstances of the case, we do not propose to do that in the case in hand.

8. For the reasons stated above, we award interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of

entitlement till the date of the actual payment. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same

shall carry interest at the rate of 18% per annum from the date the amount falls due to the deceased employee. With the above directions, this appeal

is allowed.Āĉ

(emphasis supplied)

22. In H. Gangahamune Gowda v Karnataka Agro Industries Corpn. Ltd., (2003) 3 SCC 40, it was observed, in the context of the Payment of

Gratuity Act, 1972, after noticing M. Padmanabhan Nair (supra), as follows:

Āĉ7. It is evident from Section 7(2) that as soon as gra-tuity becomes payable, the employer, whether any ap-plication has been made or not, is

obliged to deter-mine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling

authority specifying the amount of gratuity. Under Section 7(3), the employer shall arrange to pay the amount of gratuity within 30 days from the date

it becomes payable. Under sub-section (3-A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in sub-

section (3), he 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 ex-

ceeding the rate notified by the Central Government from time to time for repayment of long-term deposits; provided that no such interest shall be

payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling

authority for the delayed payment on that ground. From the provisions made in Section 7, a clear command can be seen mandating the employer to

pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the

employer from payment of gratuity with or without interest as the case may be. However, under the proviso to Section 7(3-A), no interest shall be

payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing

from the controlling authority for the delayed payment on that ground. Under Section 8, provision is made for recovery of gratuity payable under the

Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as

arrears of land revenue and pay the same to the person entitled. A penal provision is also made in Section 9 for non-payment of gratuity. Payment of

gratuity with or without interest, as the case may be, does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits ex-

pressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any

culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in State of Kerala v. M.

Padmanabhan Nair [(1985) 1 SCC 429 : 1985 SCC (L&S) 278 : (1985) 50 FLR 14 5.] Earlier there was no provision for payment of interest on the

delayed payment of gratuity. Sub-section (3-A) was added to Section 7 by an amendment, which came into force with effect from 1-10-1987. In the

case of Charan Singh v. Birla Textiles [(1988) 4 SCC 212 : 1988 SCC (L&S) 947 : (1988) 57 FLR 543] this aspect was noticed in the following

words: (SCC pp. 214-15, para 4)

“4. There was no provision in the Act for payment of interest when the same was quantified by the controlling authority and before the Collector

was approached for its realization. In fact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought

about the incorporation of sub-section (3-A) in Section 7. That provision has prospective application.”

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9. It is clear from what is extracted above from the order of the learned Single Judge that interest on delayed payment of gratuity was denied only

on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the

courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled to payment of gratuity was not right in

denying the interest on the delayed payment of gratuity having due regard to Section 7(3-A) of the Act. It was not the case of the respondent that the

delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for

the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for payment of gra-

tuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound

interest in case the amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the

mandatory requirements of the proviso to Section 7(3-A), no discretion was left to deny the interest to the appellant on belated payment of gratuity.

Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled to interest, declined to interfere with the order of the

learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned

Single Judge could not be said to be arbitrary. In the first place in the light of what is stated above, the learned Single Judge could not refuse the grant

of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed

an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised

was not arbitrary. *ĀĀĀ,ĀĀĀ*

(emphasis supplied)

23. Further, the Hon'ble Supreme Court, in the context of *ĀĀĀ,ĀĀĀ* interest *ĀĀĀ,ĀĀĀ*, in *Alok Shanker Pandey v Union of India*, (2007) 3 SCC 54,5 reasoned

thus:

*ĀĀĀ,ĀĀĀ*9. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on

capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest

on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but

instead of that A has kept that amount with himself and earned interest on it for this period. Hence, equity demands that A should not only pay back

the principal amount but also the interest thereon to B. *ĀĀĀ,ĀĀĀ*

(emphasis supplied)

24. The view of the Court is fortified by the decision in *Vijay L. Mehrotra v State of U.P.*, (2001) 9 SCC 687:

3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the

date of re-tirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.

4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to

pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e., 31-8-1997

till the date of payments.

(emphasis supplied)

25. Having regard to the facts and circumstances of the case and the submissions canvassed by learned counsel for the parties, and the judgments of

the Hon'ble Supreme Court, it is apparent that pension and gratuity are not bounties to be distributed by the Government to its employees on their

retirement but, have become, under the pronouncements of the Hon'ble Supreme Court, valuable rights and property in their hands and any

culpable delay in settlement and disbursement thereof must be dealt with by payment of interest at the current market rate till actual payment is made.

The Hon'ble Supreme Court has reiterated in D.D. Tewari (supra) that the legal principles laid down in M. Padmanabhan Nair (supra) still hold

the field qua the award of interest on delayed payments.

26. For reasons aforesaid, in the considered opinion of the Court, the petitioner is also entitled to award of interest. Factoring in the precedents

discussed hereinabove, the Court is inclined to award simple interest @ 9% per annum to the petitioner from the date of entitlement till the date of

payment with regard to all dues, excluding any payment(s) which have been made after taking care of the statutory interest part. For the remainder of

the payments, the interest shall be calculated from the date of entitlement till the date of payment.

27. The Court would clarify that since the scheme of ACP/MACP itself was made admissible to the employees of the University in terms of the letter

of the Hon'ble Chancellor issued by the Governor's Secretariat on 04.03.2014, it is deemed appropriate to grant a grace period of six months

by which time the University was required to take follow-up action, and, thus, delayed payments under the head of ACP/MACP made after

04.09.2014, shall also carry the same interest, to be computed from 1st October, 2014, till the date of actual payment.

28. The aforementioned payments be calculated head-wise and made to the petitioner within two months from today, failing which it shall be paid @

12% simple interest and the difference of 3% shall be recovered personally from the employees/officers concerned, responsible for non-compliance of

this order within the time stipulated.

29. Before parting, the Court would only indicate that it is high time the State takes proactive steps for fixing accountability for delayed payments on

the concerned authorities, especially those of the Universities, for ultimately the burden is that on the State exchequer, meaning the common man viz.

the citizen. The Education Department is, thus, directed to formulate a policy to maintain a system of monitoring to fix responsibility in the matter of

delays which leads to interest having to be paid, either under statutory provisions or by/under order(s) of the Court(s).

30. Learned counsel for the State shall communicate this judgement to the Additional Chief Secretary/ Principal Secretary/ Secretary, Department of

Education, Government of Bihar, Patna, forthwith, for taking consequential action, in light of the observations made hereinabove.