

Abdul Kuddus Khan Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Feb. 22, 2011

Acts Referred: Constitution of India, 1950 " Article 12, 21, 226

Citation: (2011) 129 FLR 598

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Sudhir Agarwal, J.

Heard Sri Mirza Ali Zulfaquar, Advocate for Petitioner, learned Standing Counsel for Respondent No. 1, Sri Ajay

Singh, Advocate for Respondent Nos. 2, 3 and 4 and Sri Dhananjay Awasthi, Advocate for Respondent No. 5. With the consent of learned

Counsel for the parties, this writ petition is being decided finally under the Rules of the Court at this stage.

2. The perennial complaint of harassment of a retired employee on account of non-payment of his retiral dues is again a cause of action in this writ

petition. Time and again, this Court has expressed its concern and many a time has taken serious view, imposing penal interest and exemplary cost

on the employer and other authorities responsible for delay in payment of retiral dues which is a fundamental right of employee concerned within

the purview of Article 21 of the Constitution, yet has not resulted in improvement. The employer and other authorities, responsible for such

payment, are unabatedly going on causing a constant harassment to the poor retired employees taking advantage of their helplessness. This is really

unfortunate and shameful.

3. The Petitioner, in this case, a Class III employee was initially appointed as Booking Clerk in the erstwhile U.P. Transport in 1971 and was

promoted to the post of Office Assistant in 1978. The post of Office Assistant Grade-II is a pensionable post. The Petitioner after attaining the age

of superannuation retired from the post of Office Assistant Grade-I on 31st July, 2005 when he last performed his duties in the office of Asst.

Regional Manager, U.P. State Road Corporation, Basti i.e. Respondent No. 4 (hereinafter referred to as ""Corporation""). Despite the fact that

Petitioner services as Office Assistant Grade-II was pensionable yet Corporation did not take any step for payment of pension. Lately, on 28th

October, 2006 a departmental circular was issued under the signature of Finance Controller of Corporation informing all concerned authorities in

the Corporation that vide Government Order dated 20th October, 2004, pension has been allowed to all employees under the Government Rules

for employees who were engaged between 1.6.1972 to 19th June, 1981. Besides, the employees holding pensionable service/ post were to return

employer's contribution after while exercising option, therefore, Regional Commissioner (Pension) proposed that the employees' contribution as

well as the employer's contribution towards provident fund be deposited in the Corporation's accounts.

4. The Petitioner submitted his requisite documents alongwith option in the office of Provident Fund Commissioner on 30th August, 2005. All other

concerned documents were submitted in the office of Corporation. The Respondent No. 5 however sent employees' contribution through cheque

in September 2005 but employer's contribution remain unpaid as a result whereof pension was not paid. Accordingly, the Petitioner sent a

representation dated 1st June, 2006 to Respondent No. 5 requesting him to furnish employer's contribution to Corporation at the earliest so that

he may get his pension.

5. The employees' contribution to the tune of Rs. 3,55,000/- was paid to the Petitioner but since the employer's contribution was not received by

Corporation, the Petitioner could not get his pension. In this regard, he sent a representation dated 15.12.2007 to the Corporation also. Reminders

also sent on 29th February, 2008, and, 30th March, 2008 and thereafter this writ petition was filed.

6. While entertaining writ petition on 6th May, 2008 this Court permitted the Petitioner to implead Respondent No. 5 and passed the following

order:

Petitioner is permitted to implead Assistant Provident Fund Commissioner, Gorakhpur as Respondent No. 5.

The Petitioner retired from the post of Office Assistant Grade -I from the office of the Assistant Regional Manager, U.P. State Road Transport

Corporation, Basti, Respondent No. 4 on 31.7.2005. His grievance is that he is not being paid his post retiral dues and pension.

Sri Ajay Singh who has put in appearance on behalf of Respondent Nos. 2 to 4 wants to seek instruction in the matter. On his request, put up on

12.5.2008.

7. Thereafter the matter came up on 12th May, 2008 and the Court passed the following order:

Petitioner retired on 31.7.2005 from the post of Office Assistant Grade-I. The dispute in the present writ petition is with regard to non payment of

provident fund and the pension.

Sri Ajay Singh learned Counsel appearing for the Respondent Nos. 2, 3 and 4 states that the relevant papers for the release of Petitioner's

provident fund have already been submitted to the Respondent No. 5 and as soon as the instructions and funds are received from his office, the

pension of the Petitioner shall be released. The delay is only on the part of Respondent No. 5.

Learned Standing counsel appearing for Respondent Nos. 1 and 5 and Sri Ajay Singh learned Counsel appearing for Respondent Nos. 2, 3 and 4

pray for and are allowed a month's time to file counter-affidavit. Two weeks thereafter are allowed to the Petitioner (sic) file rejoinder-affidavit.

List for admission/final disposal in the third week of July 2008.

8. Nothing transpired hence on 21st July, 2008, the Court has to pass the following order:

In spite of time being granted to the learned Standing Counsel on 12.5.2008, he has not filed any counter-affidavit on behalf of Respondent No. 5.

It has been contended that Sri Ajay Singh learned Counsel appearing on behalf of Respondents 2, 3 and 4, has sent various letters to Respondent

No. 5 for release of the Employees Contribution Fund but no reply has been received from the Respondent No. 5, the details of which are given in

Para-5 of counter-affidavit.

Respondent No 5 is directed to pay the Employees Provident Fund to the Petitioner within one month or file his counter-affidavit and show-cause

within the same time. If no counter-affidavit is filed within the aforesaid time or if payment is not made, the Respondent No. 5 shall appear in

person on the next date fixed.

9. Thereafter when the matter came up on 19th January, 2011, the Court found that Respondent No. 5 has neither responded nor represented,

hence non-bailable warrant was issued. Ultimately, Respondent No. 5 appeared, filed his affidavit and informed that no notice was served upon

him hence he could not respond.

10. From the affidavit of Respondent No. 5 it transpired that Rs. 70,560/- vide cheque No. 772758/- dated 30th June, 2008 and Rs. 1,06,339/-

vide cheque No. 64747 dated 27th November, 2009 were forwarded to Regional Manager of the Corporation, Gorakhpur. Out of the aforesaid

two amounts Rs. 70,560/- was shown as Benefit Amount and Rs. 1,06,339/- was shown as employer's contribution. Thereafter this Court

directed Respondent Nos. 2, 3 and 4 to file a proper affidavit to show, when the amount relegated by Respondent No. 5 in 2008 and 2009 was

received, why upto January, 2011 pension/retiral benefits were not paid and in what circumstances such delay occurred.

11. A supplementary counter-affidavit has been filed today sworn by Sri Ram Briksh, Regional Manager of Corporation at Gorakhpur. It is said,

several letters sent by Corporation to Respondent No. 5 for release and finalization of employer's contribution. These letters are dated 23rd

November, 2005, 06th March, 2006, 07th June, 2006, 11th August, 2006, 2nd November 2006, 20th January, 2007, 25th April, 2007, 05th

July, 2005, 28th September, 2007, 22nd April, 2008 and 13th May, 2008. Respondent Nos. 2 to 4 also refer to some subsequent letters dated

3rd September, 2008, 17th October, 2008, 26th July, 2008, 26th November, 2008, 5th December, 2009, 8th February, 2010 and 9th April,

2010. It is however admitted that sum of Rs. 70,560/- and Rs. 1,06,339/- were received and credited in the account of Respondent Nos. 2 to 4

on 11th July, 2008 and 7th January, 2010. However, no details were given by Respondent No. 5 alongwith these cheques about employer's

contribution or pensionary contribution. It is also said that under the Rules without receiving Form-K, which contains certain information, it was not

possible for Corporation's Head Quarter to sanction pension. A format of Form K is placed on record (Annexure-3 to the supplementary

counter-affidavit). Form K information is said to have been received from Respondent No. 5 on 17th February, 2011. However, in the meantime,

on the basis of documents placed on record by Respondent No. 5 vide his reply filed before this Court, Respondent No. 3 forwarded requisite

papers to Headquarter on 16th February, 2011. It is said that pension and gratuity has now been sanctioned by Headquarter on 19th February,

2011 and arrears of pension will be released shortly. It could not be calculated for want of Form-K duly filled in by Respondent No. 5.

12. The entire defence of Respondent Nos. 2 to 4 therefore is founded on non-availability of duly filled in Form K from the office of Respondent

No. 5 which they claim was a statutory requirement and without this form, pension and gratuity etc. could not have been paid to the Petitioner. This

Court made a specific query to Sri Ajay Singh, learned Counsel for Respondent Nos. 2 to 4 as to which rule refers to preparation of Form-K and

its submission by Respondent No. 5 without which pension or gratuity of an employee shall not be paid. The reply given by Sri Ajay Singh, counsel

for Corporation in his own words has been noticed by this Court and is reproduced as under:

Counsel I am sorry My Lord. There is no any rule.

Court Under which provision Form -K is necessary?

Counsel No such provision in the Act.

Court Under which provision Form-K is issued? You

know or don't know.

Counsel I don't know.

Court Under which law it is issued?

Counsel Very shortly I would give reply.

13. However no further details could be given. This Court required Sri Ajay Singh to show as to what information is required to be given by

Respondent No. 5 in Form-K which the Corporation itself did not possess. The details of contribution whether that of employer or employee are

available in the account of the Corporation, the service details of the employees concerned is also there and hence what is that peculiar information

which the Corporation did not possess and could have gathered only after getting Form-K was the anxiety of the Court but Sri Singh could not

point out any such thing. He said repeatedly said that without Form-K, duly filled in by Respondent No. 5, no responsibility lie on Respondent

Nos. 2 to 4 to pay pension and gratuity but neither could lay his hand to any rule providing for furnishing of Form-K and authorising the employer

i.e. Corporation to pay retiral benefits to the employees unless such form is received nor could show that there was any information given in Form

K which otherwise was not in the record and knowledge of Respondent Nos. 2 to 4 and in absence of such information, retiral benefits could not

have been paid.

14. Apparently, therefore, delay in payment of pension and gratuity to the Petitioner by Corporation is without any authority of law. It has caused

only due to their own conjunctures and surmises and for non statutory alleged practice and bottleneck created thereby. This kind of practice

perhaps observed to harass a poor retired employee. In the absence of any other valid reason shown by learned Counsel for the Corporation, this

Court is justified to infer as above. Such approach cannot be approved or condoned but deserve to be castigated and condemned in the strongest

words.

15. The learned Counsel for the Respondents-Corporation refers to an internal circular dated 27th June, 2008 issued by Finance Controller which

says that matters of pension and other retiral benefits of employees must be attended expeditiously and should be disposed of speedily, but,

simultaneously due care be observed to avoid any loss to the Corporation. If therefore required that following information may be verified:

16. This letter of the Finance Controller is in the nature of precautions needed to be observed by officers of Corporation while dealing with the

matters of retiral benefits of an employee so that anything not due to employee, may not be paid causing loss to the Corporation.

17. But this kind of precautionary steps cannot be allowed to be a tool in hand creating embargo or a cloak for not paying retiral benefits to an

employee for several years. The apprehension of a possible loss to Corporation, no doubt must be given due care by officials in discharge of their

duties in a bona fide manner but simultaneously it cannot be extended of denying what is due in law or otherwise to an employee for years to come.

If this stand of Corporation is accepted, it would result in giving a license to officials of Corporation to make retired employees run here and there

for decades without there being any corresponding obligation on the Corporation to compensate employees for such harassment. Whatever

precaution need be observed as provided in the alleged circular dated 2th June, 2008, therein the retired employee had no role to play. Therefore

something over which a retired employee has no role or control, cannot be allowed to be a handy pretext or justification to withhold retiral benefits

to an employee which is his right in law as well as in the Constitution.

18. Today, one cannot dispute that pension has attained the status of fundamental right, a facet of right to earn livelihood enshrined under Article

21 of the Constitution. Pension and retiral benefits have been held deferred wages which an employee earn by rendering service for a particular

length of time. This is what was held by Apex Court in D.S. Nakara and Others Vs. Union of India (UOI), This proposition is almost settled. To

defer this right of an employee for an unreasonably long period, one must have an authority in law which more or the less must be specific and

clear. On the mere pretext of caution, such right cannot be made to suffer in any manner. Whenever such an occasion is brought to notice, this

Court has risen to protect the poor and helpless retired employee.

19. Besides above, it is also evident from record that from December, 2005 when Petitioner submitted his option and completed other documents;

till 30th June, 2008 and 27th November, 2009, the Respondent No. 5 also did not pay employers contribution etc. This delay on the part of

Respondent No. 5 is also unexplained in the counter-affidavit of Respondent No. 5. Whatever thus observed above for Respondent Nos. 2 to 4

above equally apply to Respondent No. 5 also.

20. A system controlled by bureaucrats can create wrangles to device something which is formulated by policy makers for the benefit of the citizen

is writ large from this case. A beneficial scheme made for social welfare of old and retired employees, can be twisted by the system creating a

nightmare to retired employees, as is quite evident. The constitutional obligation though pen down to reach the people but Executive, habitual of

remaining static or move slow or no movement at all, can render such scheme quite ineffective and inoperative. Something due today may not be

available to a person right in time. It is like a person starving today is assured food to be provide after a month or two by which time he may die of

hunger or the foodstuff itself may rot. If this is not unconstitutional then what else can be.

21. Moreso, when this matter remain pending for more than two years before this Court, yet Respondents did not woke up to meet grievance of

Petitioner. The pain and torture faced by retired employee and his family, in such circumstances, can be easily visualised and felt but cannot be

assessed in the same way only those who really suffer, know it. This pain and humiliation cannot be compensated in terms of money.

22. Respondent Nos. 2 to 5, in their own way, obviously moved with snail pace adding to the misery of a retired Class III employee without

realising how a poor employee and his family would be meeting their two times meal and other necessities during these days of high price escalation

when even full salary paid to employees find it difficult to meet his/their necessities. The Petitioner probably could not resort to the underhand

facility procedure to get his matter expedited and that is how he had to suffer in silence. Instead of resorting to an illegal act which it could have

expedited his matter, in his wisdom decided to avail constitutional remedy of judicial review but here also the matter remain pending for almost

three years. The Petitioner's agony continued on account of repeated adjournments obtained by Respondents in responding, which this Court

readily permitted. That is how the misfortune of the Petitioner continued all through.

23. I am constrained to observe that time has come now when long adjournments should not be frequently and easily be granted. Response of

official Respondents must to come within a short time. The Court cannot have the luxury of giving several weeks and months" time seeking

response where extra ordinary equitable speedy jurisdiction under Article 226 has been invoked by a harassed pinnacle. Half a century ago, time

of more than a week to other side for placing its response might have been necessary since system of communication was not so fast. The people

also did not have better facilities of travelling and conveyance but now, particularly in the last more than two decades, the situation has gone a sea

change. We can communicate across the world within no time. The Government machinery has already consumed a hefty sum from valuable public

money in modernising its system of communication etc., It is inconceivable that a person in the farthest place in the State may not be informed to

respond to the Court within a few hours. In order to prepare the case and study record, one may understand of giving a few more days but it is

inconceivable that time of weeks and months together be allowed to pass awaiting reply of Respondents; in particular where State Government, its

officials and instrumentalities are party. If Government's officials are willing and ready to respond to Court cases, they can file their response within

a week or even less. Probably, it is the lethargic old system still prevailing in the minds of Government Officials in regard to Court cases, and, that

is how, months and years pass but they fail to respond causing extra ordinary delay in disposal of Court cases.

24. Not only this Court but all the Courts throughout the country are reeling under the pressure of mounting arrears. A lot of hue and cry here and

there is going on about extra ordinary delay in dispensation of justice by the Courts of law but one has to be realistic to appreciate the real

problem. It lies on the part of Executive in showing response to pending cases. Despite receiving information, for one or the other reason, and

mostly without any reason, they continue to ignore showing attitude of non response and that is how the cases are piling up. Small matters, which

may be decided then and there, if stand of the Government is immediately informed to Court also remain undisposed of for this very reason. When

some Courts, after awaiting for a reasonable time, try to decide the matters without further awaiting for reply, the Government and its authorities

raise a hue and cry that without giving opportunity of hearing for reasonable time, cases are being decided ex parte. In their understanding,

probably the term "reasonable opportunity" means indefinite period. This Court finds it an opportune moment to refer some observation made in

the majority order dated 17.9.2010 of Full Bench in OOS No. 4 of 1989, Sunni Central Board of Waqf, U.P. Lucknow and Ors. v. Gopal Singh

Visharad and Ors., where the Court observed:

14. ...Is it what we have to deliver to our future generation that the courts of law in India are not capable to decide cases for generations and on a

mere drop of a hat, an excuse is found to defer the matter or adjourn the case? Are we here to find out ways and means of deferring adjudication

or to make adjudication? No case, no dispute and no apprehension can be above the honest discharge of constitutional function by an independent

judiciary. The people of India are already having serious complaints in abundance in recent past against the judicial system of this country that it

keeps the matter lingering on for generations and attempt to decide cases is minimal.

15. With the increased awareness, the people are getting conscious of their right and do not hesitate in asserting it. If the enforcement of rights get

deferred not because of any slackness on their part, but due to extremely slow pace or inaction on the part of judiciary, their complaint cannot be

levelled frivolous. In a system of good governance, effective, independent judicial system is not only the requirement but the real crux lies whether it

can deliver justice within reasonable time; whether it can decide the issue expeditiously and before the patience of the people exhausts? These are

some of the aspects which need be seriously taken up by the Bench and Bar both. This is the high time when not only the Presiding Officers of the

Court but also the members of the Bar who are also officers of the Court should ponder over seriously and find out the way in which cases may be

decided expeditiously instead of inventing the way for their deferment and adjournments. The courts are meant for adjudication and not for

adjournments or deferment.

25. Learned Counsel appearing for Respondents simply tried to shift responsibility of delayed payment of retiral benefits to Petitioner but the fact

remain undenied that more than five years delay is wholly unreasonable. The Petitioner, a retired employee, had no role whatsoever except of

suffering the cause.

26. As already said, pension is not a bounty but a right of employee who has served the employer for long and is entitled for retiral benefits being

his deferred wages. The Apex Court in D.S. Nakara (supra) has observed:

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." (Para 20).

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 underserved want was recognized and as a first steps 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 not master the best, expecting him to look after him in the fall of life. A retirement system therefore exists solely for the purpose

of providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal retirement receives the same amount." (Para

22).

Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service

rendered in the past" (Para 28).

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

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. (Para 29)

27. Withholding of pension and other retiral benefits of retired employees for years together is not only illegal and arbitrary but a sin if not an

offence since no law has declared so. The officials, who are still in service and are instrumental in such delay causing harassment to the retired

employee must however feel afraid of committing such a sin. It is morally and socially obnoxious. It is also against the concept of social and

economic justice which is one of the founding pillar of our constitution.

28. In our system, the Constitution is supreme, but the real power vest in the people of India. The Constitution has been enacted ""for the people,

by the people and of the people"". A public functionary cannot be permitted to act like a dictator causing harassment to a common man and in

particular when the person subject to harassment is his own employee.

29. Regarding harassment of a common referring to observations of Lord Hailsham in *Cassell & Co. Ltd. v. Broome* 1972 AC 1027 and Lord

Devlin in *Rooks v. Barnard and Ors.* 1964 AC 1129, the Apex Court in *Lucknow Development Authority Vs. M.K. Gupta*, held as under;

An Ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of

law.... A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an

exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it.... Harassment of a common man

by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. (para

10)

30. The above observations as such have been reiterated in *Ghaziabad Development Authority Vs. Balbir Singh*,

31. The Respondents being ""State"" under Article 12 of the Constitution of India, its officers are public functionaries. As observed above, under our

Constitution, sovereignty vest in the people. Every limb of constitutional machinery therefore is obliged to be people oriented. Public authorities

acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour. It is high time that this Court should

remind Respondents that they are expected to perform in a more responsible and reasonable manner so as not to cause undue and avoidable

harassment to the public at large and in particular their ex-employees like the Petitioner. The Respondents have the support of entire machinery and

various powers of statute. An ordinary citizen or a common man is hardly equipped to match such might of State or its instrumentalities.

Harassment of a common man by public authorities is socially abhorring and legally impressible. This may harm the common man personally but the

injury to society is far more grievous. Crime and corruption, thrive and prosper in society due to lack of public resistance. An ordinary citizen

instead of complaining and fighting mostly succumbs to the pressure of undesirable functioning in offices instead of standing against it. It is on

account of, sometimes, lack of resources or unmatched status which give the feeling of helplessness. Nothing is more damaging than the feeling of

helplessness. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match inaction in public

oriented departments gets frustrated and it erodes the credibility in the system. This is unfortunate that matters which require immediate attention

are being allowed to linger on and remain unattended. No authority can allow itself to act in a manner which is arbitrary. Public administration no

doubt involves a vast amount of administrative discretion which shields action of administrative authority but where it is found that the exercise of

power is capricious or other than bona fide, it is the duty of the Court to take effective steps and rise to occasion otherwise the confidence of the

common man would shake. It is the responsibility of Court in such matters to immediately rescue such common man so that he may have the

confidence that he is not helpless but a bigger authority is there to take care of him and to restrain arbitrary and arrogant, unlawful inaction or illegal

exercise of power on the part of the public functionaries.

32. In a democratic system governed by rule of law, the Government does not mean a lax Government. The public servants hold their offices in

trust and are expected to perform with due diligence particularly so that their action or inaction may not cause any undue hardship and harassment

to a common man. Whenever it comes to the notice of this Court that the Government or its officials have acted with gross negligence and

unmindful action causing harassment of a common and helpless man, this Court has never been a silent spectator but always reacted to bring the

authorities to law.

33. In *Registered Society v. Union of India and Ors.* (1996) 6 SCC 530, the Apex court said:

No public servant can say ""you may set aside an order on the ground of mala fide but you cannot hold me personally liable"" No public servant can

arrogate in himself the power to act in a manner which is arbitrary.

34. In *Shivsagar Tiwari Vs. Union of India (UOI) and Others*, the Apex Court has held:

An arbitrary system indeed must always be a corrupt one. There never was a man who thought he had no law but his own will who did not soon

find that he had no end but his own profit.

35. In *Delhi Development Authority Vs. Skipper Construction and another*, has held as follows:

A democratic Government does not mean a lax Government. The rules of procedure and/or principles of natural justice are not meant to enable the

guilty to delay and defeat the just retribution. The wheel of justice may appear to grind slowly but it is duty of all of us to ensure that they do grind

steadily and grind well and truly. The justice system cannot be allowed to become soft, supine and spineless.

36. Now, coming to another aspect of the matter, if retiral benefits are paid with extra ordinary delay; the Court should award suitable interest

which is compensatory in nature so as to cause some solace to the harassed employee. No Government official should have the liberty of harassing

a hopeless employee by withholding his/her lawful dues for a long time and thereafter to escape from any liability so as to boast that nobody can

touch him even if he commits an ex facie illegal, unjust or arbitrary act. Every authority howsoever high must always keep in mind that nobody is

above law. The hands of justice are meant not only to catch out such person but it is also the constitutional duty of Court of law to pass suitable

orders in such matters so that such illegal acts may not be repeated, not only by him/her but others also. This should be a lesson to everyone

committing such unjust act.

37. Interest on delayed payment on retiral dues has been upheld time and again in a catena of decision. This Court in *Shamal Chand Tiwari v.*

State of U.P. and Ors. (Writ Petition No. 34804 of 2004) decided on 6.12.2005 held:

Now the question comes about entitlement of the Petitioner for interest on delayed payment of retiral benefits. Since the date of retirement is

known to the Respondents well in advance, there is no reason for them not to make arrangement for payment of retiral benefits to the Petitioner

well in advance so that as soon as the employee 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. In the case of

State of Kerala and Ors. v. M. Padmnabhan Nair 1985 (1) SLR 750, the Hon'ble Supreme Court has held as follows:

Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting 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 months. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be

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

commence at the expiry of two months from the date of retirement.

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.

38. In view of the above, I have no hesitation in holding that non payment of retiral benefits and Ors. to Petitioner is arbitrary and unreasonable.

There was no justification at all for Respondents to delay payment thereof.

39. In the above facts and circumstances, the writ petition is allowed with the following directions:

(1) The entire amount of arrears of pension shall be paid to Petitioner within one month from the date of production of a certified copy of this order

before the authorities concerned. The current pension shall be paid as and when due.

(2) The Petitioner shall be entitled to interest on delayed payment of pension and gratuity @ 12%.

(3) Liability of payment of interest is divided on Respondent Nos. 2 to 5 in the following manner:

(i) The Respondent No. 5 shall pay interest on the amount of pension and gratuity including arrears by paying interest upto 27th November, 2009.

(ii) For period subsequent to 27th November, 2009, interest on the amount of pension and gratuity including arrears shall be paid by Respondent

Nos. 2 to 4.

(4) For sheer carelessness, negligence and inaction on the part of Respondents causing delay and also for misleading this Court in one or the other

way, this is a fit case where exemplary cost should be awarded. I quantify the cost to Rs. 2 lakhs to be shared 50% by Respondent Nos. 2 to 4;

and 50% by Respondent No. 5. It shall be paid to Petitioner alongwith arrears of pension.

(5) Respondent No. 1 however shall be at liberty to recover the amount of interest and cost paid to Petitioner under this order from the official(s)

concerned, who is/are found responsible for extra ordinary delay in payment of retiral benefits to the Petitioner, after such inquiry as is required in

law.