

## Ram Milan Yadav Vs State of U.P. and Others

**Court:** Allahabad High Court (Lucknow Bench)

**Date of Decision:** Jan. 6, 2012

**Acts Referred:** Constitution of India, 1950 " Article 21  
Uttar Pradesh Industrial Disputes Act, 1947 " Section 4K

**Citation:** (2012) 4 ADJ 91 : (2013) 1 ALJ 323

**Hon'ble Judges:** Sudhir Agarwal, J

**Bench:** Single Bench

**Advocate:** Faisal Ahmad Khan, for the Appellant; C.S.C., Ravi Singh, for the Respondent

**Final Decision:** Allowed

### Judgement

Hon'ble Sudhir Agarwal, J.

Heard Sri Faisal Ahmad Khan, learned counsel for petitioner, learned Standing Counsel for respondents 1, 2

and 5 and Sri Ravi Singh, Advocate, appearing for respondents 3 and 4. Writ petition is directed against the order dated 6.9.2011 whereby

representation of the petitioner against the recovery of Rs. 1,27,632/- has been rejected and the pensionary benefits of the petitioner have been

directed to be determined/computed in the light of the aforesaid recovery.

2. Facts, in brief, giving rise to the present dispute are as under.

3. Petitioner was appointed as Meter Reader in 1969. He was promoted as Pipe Line Inspector on 1.6.1978. Despite promotion, he was not paid

salary on the post of Pipe Line Inspector, hence represented the matter to the authorities concerned, but instead of paying salary on the promoted

post, he was reverted as Meter Reader in 1985 whereagainst petitioner raised an industrial dispute. In exercise of powers u/s 4K of U.P. Industrial

Disputes Act, 1947 (hereinafter referred to as "1947 Act") by notification dated 29.10.1986, the following reference was made for adjudication by

Industrial Tribunal-II at Lucknow:

4. The matter was registered as Adjudication Case No. 132 of 1986. The reference was answered in affirmance and in favour of petitioner holding

that he is entitled to be declared permanent as Pipe Line Inspector with effect from 1.6.1978 and also for the pay-scale applicable to the said post.

The writ petition against the aforesaid award was dismissed by this Court on 7.10.1991, SLP was dismissed by Apex Court on 15.1.1997 and

review petition was dismissed on 7.10.1998. Copy of order rejecting Review Application on 7.10.1998 has been placed on record as Annexure-

8 to the writ petition. Obviously, thereafter petitioner was entitled for payment of salary in the pay-scale applicable to Pipe Line Inspector and all

other consequential benefits.

5. Petitioner retired on attaining the age of superannuation on 30.6.2007 from the post of Pipe Line Inspector in Jalkal Vibhag of Nagar Palika

Parishad, Faizabad. It is not in dispute that the aforesaid post is governed by U.P. Palika Non-Centralized Service Retirement Benefits

Regulations, 1984 (hereinafter referred to as "1984 Regulations"). Despite retirement, the retiral benefits were not paid within a reasonable time.

Petitioner's pension-papers were forwarded on 4.2.2009 but were remitted back by Director, Local Fund Accounts on 23.3.2009 stating that

petitioner was entitled for payment of 1,63,730/- towards gratuity subject to fulfilment of certain conditions. These conditions included re-

determination of salary of petitioner on the post of Pipe Line Inspector and that the earlier fixation was wrong as a result whereof petitioner is liable

to refund Rs. 1,63,730/-. Subject to recovery of the aforesaid amount from the responsible person retiral dues of petitioner be paid, the order

said.

6. Aggrieved by the aforesaid order dated 23.3.2009, petitioner filed writ petition No. 8418 (S/S) of 2009. The writ petition was allowed on

4.8.2011 and the order dated 23.3.2009 was quashed. The Court permitted respondents to pass a fresh order on the fresh representation to be

made by petitioner alongwith the requisite documents in support of his claim. It appears that while allowing petitioner's writ petition this Court

referred to and relied on its earlier decision in Ram Manohar Kapoor v. State of U.P. and others, 2010 (5) ALJ 474.

7. However, respondent No. 2 has passed impugned order not only by referring and relying on its earlier order dated 23.3.2009 but it appears

that he is not given any consideration to the judgment in Ram Manohar Kapoor (supra). Learned counsel for petitioner, in these circumstances,

contended that approach of respondent No. 2 in reiterating what he has stated earlier is clearly not only patently illegal and arbitrary, but also,

contemptuous showing an adamant attitude on his part to proceed in a manner it has already decided without caring to the authority and law laid

down by this Court in various cases and in particular petitioner's own matter in which this Court specifically referred to the judgment in Ram

Manohar Kapoor (supra). He also contended that delay in payment of retiral dues to petitioner is clearly arbitrary and illegal and, therefore,

petitioner is entitled not only for payment of entire dues at the earliest but a compensatory interest thereon and cost.

8. Learned Standing Counsel and Sri Ravi Singh appearing for respondents sought to support the impugned order relying on the reasons contained

therein. It is also stated that order for payment of pension has already been passed and due sanction has been granted by Commissioner on

31.10.2011. Relying on various Government Orders of 1979, 1986 and 1996, it is said that petitioner in fact was entitled for pay-scale of Rs.

975-1660/-with effect from 1.1.1986 instead of Rs. 1200-1800/-; from 1.1.1996 he was entitled to pay-scale of Rs. 3200-4900 instead of

4000-6000 and, therefore it is evident that he was paid salary in a higher pay-scale which was wrongly fixed by respondent-Nagar Palika Parishad

and the aforesaid error has been directed to be rectified by the impugned order. It is also said that the Government Order dated 16.1.2007 is not

applicable to petitioner. The consideration of correctness of salary paid to petitioner is the statutory obligation of respondent No. 2 under

Regulation 13(2) of 1984 Regulations and in discharge of statutory function it has passed the impugned order which warrants no interference.

9. I have heard learned counsel for parties and perused the record.

10. It is really unfortunate that having retired on 30.6.2007, i.e. almost four and half years ago, petitioner is still struggling for his retiral benefits.

The petitioner's claim to the post of Pipe Line Inspector came to be adjudicated by Industrial Tribunal-II at Lucknow wherein one of the defence

appears to have been taken by respondent-Nagar Palika Parishad is that petitioner is not qualified for the post of "Pipe Line Inspector" as is

evident from para 4 of award which reads as under:

that the workman concerned is not a qualified.

11. The objections/defence taken by Nagar Palika Parishad was not accepted and the Tribunal answered the reference in favour of workman i.e.

the petitioner. The reference nowhere talks of promotion of petitioner as Pipe Line Inspector (Unqualified). On this aspect neither this Court when

dismissed the writ petition of Nagar Palika Parishad, Faizabad gave any relief to them nor the Apex Court while dismissing the Special Leave

Petition. However, in the service book, copy whereof has been filed by petitioner as Annexure-10 to writ petition, it is evident that his pay fixation

was made as Pipe Line Inspector (Unqualified). He was given pay-scale of Rs. 200-340 with effect from 1.6.1978 and the endorsement shows

that he was held entitled for pay-scale as revised by the Government from time to time.

12. The Government Order dated 30.12.1981 placed on record by respondents as Annexure CA-2 provides existing pay-scale and revised pay-

scale with effect from 1.7.1979 as under:

Post Existing Scale Revised Scale

Inspector (Qualified) 220-400 400-695

Inspector (Unqualified) 195-315 340-550

13. Thus grant of scale of 200-340 with effect from 1.6.1978 to petitioner while confirming and promoting him as Pipe Line Inspector is not in

dispute. The Government Order contemplates existing scale of Inspector (Unqualified) to be 195-315 which was revised to 340-550. This revised

pay-scale of 340-550 is not applicable to existing scale of 200-340. In fact petitioner's pay-scale in which he was placed while promoted as Pipe

Line Inspector with effect from 1.6.1978 is much more than what was the existing scale of Inspector (Unqualified) as has been shown in the

Government Order dated 30.12.1981 and a little lesser than that of the scale of Inspector (Qualified). Whether any clarification in view of the

aforesaid anomaly was issued by respondent-competent authority at any point of time is not known but from record, it appears that in view of the

fact that petitioner was getting a higher scale than what was the existing scale of Inspector (Unqualified), competent authority in its wisdom found it

appropriate to apply higher scale than 340-550 and that is how petitioner was given the scale of 400-695 with effect from 1.7.1979. The

subsequent revisions of the pay-scale of petitioner have followed the above facts and circumstances.

14. The above fixation of pay of petitioner has not been found to be result of any fraud or misrepresentation on the part of petitioner. There was

some anomaly in the Government Order dated 30.12.1981 which was considered and decided in one manner i.e. giving benefit to petitioner. It,

thus, cannot be said that competent authority placing the petitioner in pay-scale of Rs. 400-695 with effect from 1.7.1979 as such had committed a

patent legal error or acted without jurisdiction in providing him a pay-scale which was not available or applicable to him. In the given facts and

circumstances, this Court admits no doubt that respondent No. 2 in a mechanical manner referring to the pay-scale of Inspector (Unqualified) with

reference to Government Order dated 30.12.1981, without looking to the existing pay-scale which were contemplated in the said Government

Order vis-a-vis the pay-scale the petitioner was actually getting or given with effect from 1.6.1978, has shown a total non application of mind. The

impugned order in taking a view against the petitioner thus is wholly illegal and cannot be sustained. This Court has no hesitation in observing that

respondent No. 2 has acted wholly illegally in observing that petitioner was given a palpably wrong pay-scale on 1.7.1979 and its consequential

revision which is liable to be re-fixed and re-determined. In the garb of determining the pension, respondent No. 2 now and at such a late stage

cannot assume jurisdiction of pay fixation authority which in the given facts and circumstances has acted in a particular manner and the said

decision cannot be said to be wholly illegal or without jurisdiction, in the light of discussions made above.

15. The matter does not rest here. There is another aspect of the matter which has already been considered by this Court in petitioner's earlier writ

petition when respondent No. 2's order dated 23.3.2009 was set aside but respondent No. 2 has completely failed to apply its mind to that

aspect in the impugned order.

16. This Court has referred to its earlier decision in Ram Manohar Kapoor (supra) while passing the judgment dated 4.8.2011 in petitioner's

earlier writ petition. The issue considered in Ram Manohar Kapoor (supra) is when a higher pay-scale has been provided to an employee, though

erroneously, by the employer, and salary in such higher scale is paid, can it be allowed to be recovered after a long time on the ground that higher

pay-scale was wrongly given to the employee concerned. There is no element of fraud or misrepresentation on the part of employee. Discussing

this issue and referring to various authorities of this Court as well as the Apex Court, it was held in Ram Manohar Kapoor (supra) that after a long

time no recovery by re-fixing pay in lower scale can be ordered and to this extent, decision of recovery of amount is illegal and arbitrary.

17. In the present case also, in the impugned order, it has not been said anywhere by respondent No. 2 that petitioner was given pay-scale of Rs.

400-695 with effect from 1.7.1979 and subsequent corresponding revisions on account of fraud or misrepresentation played by him. If that is so,

recovery after retirement of the employee concerned that is after a long time is palpably illegal and arbitrary. It was so held in Ram Manohar

Kapoor (supra) also.

18. Though this Court, presently, has come to the conclusion that pay fixation of petitioner in the present case was not illegal or without jurisdiction

as has been assumed by the respondents but even if it is assumed that petitioner was given aforesaid pay-scale by some mistake on the part of an

authority of Nagar Palika Parishad, Faizabad that shall not authorize the respondents for ordering recovery of alleged excess amount paid to the

petitioner when he was in service and that too after decades and ultimately after the retirement of petitioner.

19. Dealing with this issue, this Court in Ram Manohar Kapoor (supra), while referring to several other authorities, in paras 14 to 22 observed as

under:

14. An average employee is considered to have no saving capacity except through forced savings, such as, contribution to provident Fund or

premium towards Life Insurance etc. He is expected to consume his pay packet in meeting the daily needs for him and his family. If by mistake the

employer makes over payments and such mistake is not induced by any representation from the employee and the employee has received higher

scale due to default it is only just and proper not to recover and excess amount already paid to him.

15. In *Sahib Ram Vs. State of Haryana and Others*, , there was a mistake in the fixation of pay-scale of the appellant. He received his pay on

higher pay-scale than due resulting in over payment, which the State Subsequently sought to recover, the Hon"ble Supreme Court observed:

....it is not on account of any misrepresentation made by the appellant that the benefit of higher pay-scale was given to him but wrong construction

made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered

from the appellant.

16. In *Nand Kishore Sharma and others v. State of Bihar and others* , the employees of Agriculture Department were granted revised pay-scale

on the recommendation of Anomaly Committee consent to which was given by the Finance Department. The employees were given benefits of

revised pay with arrears of pay. However, the State Government never officially accepted the revised pay-scale and sought to recover the

difference of salary from the employees was interfered by the Supreme Court stating that payment having been made as a result of Anomaly

Committee's recommendation and concurrence of the Finance Department, the State could not have reversed the same, more so, without

affording prior opportunity to the employees the recovery was impermissible. However, the withdrawal of the revised pay-scale was allowed.

17. In the case of *State of Jammu and Kashmir v. Pirzada Gulam Nabi*, 1998 SCC (L&S) 462, it is held by the Apex Court that when salary was

already paid under any misapprehension and by the time correct position emerged the employee already retired from service, the Courts may be

reluctant to order recovery from such retired employee, as recovery would put a retired employee to hardship.

18. In *Union of India and Others Vs. Shri Ram Gopal Agarwal and Others*, , noticing that recovery order caused hardship, the Supreme Court

held that such recovery cannot be effected. The same view was taken in *Bihar State Electricity Board v. Bijay Bahadur*, 2000 SCC (L&S) 394.

19. In *K. Vasudevan v. Mohan N. Mali*, 2003 SCC (L&S) 90, payments were effected on account of wrong promotion; the Supreme Court held

that promotion could be annulled but no recovery was permissible.

20. In the case of *Duryodhan Lal Jatav Vs. State of U.P. and Others*, , this Court has held that if additional payment has been made to the

employees for no fault of their, they should not be penalized for this.

21. In the case of Ram Murti Singh v. State of U.P. and others, 2006 (4) ESC 2379 (All) (DB), this Court has held that ""Having given our anxious

consideration to the various pleas raised by the learned counsel for the parties, we find that now it is well settled by the decision of the Apex Court

that if employees have received higher scale due to no fault of theirs, it would only be just and proper not to recover any excess amount already

paid to them"".

22. In view of the above stated proposition of law in the instant case the order dated 8.10.2007 passed by opposite party No. 3 is not sustainable

and arbitrary in nature.

20. Earlier also, a Full Bench of this Court in Surya Deo Mishra v. The State of U.P. through Chief Secretary, 2006 (1) ADJ 467 (FB) : 2006(1)

ESC 379 (All)(FB), held as under:

... in service matters, if the incumbent has worked and has been paid, unless his claim was fraudulent, based upon frivolous grounds or upon acute

factual dispute, the amount so paid ought not to be recovered. Even in cases of excess payment, it cannot be recovered unless said payment is

result of the employee's mistake or on his showing.

21. A Division Bench of this Court (in which I was also a member) in Special Appeal No. 1317 of 2003 (M.D./Chief Engineer U.P. Jal Nigam

and others v. Sri Nath Singh and others) decided on 22.12.2006 referring to various authorities on the issue, held as under:

In the matter of recovery, we may remind to the authorities that now it is well settled if certain payment has been made to the employee on account

of any fault of the employer, and for which the employee is not responsible, namely, not guilty of fraud or misrepresentation, in such a case, the

amount which has already been received by the employee and he has spent, should not be recovered. (See B.N. Singh v. State of U.P. and

another, 1979 ALJ 1184; Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, ; Gabriel Saver Fernandes and others v. State of

Karnataka and others, 1995 Suppl. (1) SCC 149; Mahmood Hasan and others, etc. etc. Vs. State of U.P. and others, ; The State of Karnataka

and Another Vs. Mangalore University Non-Teaching Employees Association and Others, ; Surya Deo Mishra v. State of U.P., 2006 (1) ADJ

467 (FB) : 2006(1) ESC 379 (All)(FB); Purushottam Lal Das and others v. State of Bihar and others, 2006(10) SCALE 1999.

22. In view of these discussion, even the order of recovery of Rs. 1,63,730/- is clearly uncalled, misconceived and cannot sustain.

23. The third error which goes to the extent of contempt on the part of respondent No. 2 is the reliance placed by him on the order dated

23.3.2009 which has already been set aside by this Court vide judgment dated 4.8.2011. In the impugned order, respondent No. 2 has said:

24. Learned Standing Counsel admits that the date mentioned as 23.9.2009 is actually 23.3.2009 since there is no order dated 23.9.2009. This

order undisputedly was not in existence having already been set aside by this Court vide judgment dated 4.8.2011, yet has been relied, referred to

and justified by respondent No. 2 in the impugned order dated 6.9.2011. This Court really fails to understand this misconceived notion on the part

of respondent-authorities. He has no understanding of consequences flowing from the judgment setting aside executive orders. When an executive

order is set aside or declared void, it ceases to exist in law since inception. Once that is the situation, respondent No. 2 had no authority or option

to refer any such order which has already been set aside by the Court. If this consequence is not acceptable or admitted or understandable by the

Officer concerned, it means that it does not accept the binding force of the judgment of this Court and despite making order inoperative and void,

the executive authority in fact is treating existence of such an order capable of reliance in subsequent orders. This attitude on the part of respondent

No. 2 in the present case is clearly contemptuous and derogatory to the majesty of this Court. No person can be allowed to assume an authority

own to himself to this effect. Deprecating such a practice, this Court has observed strongly in *Smt. Mithilesh Kumari Vs. State of U.P. and Others*,

and has gone to the extent of holding that such an attempt on the part of Officer concerned may be on account of reason other than bona fide i.e.

extraneous consideration which may be in the realm of corruption.

25. Going further, this Court is of the view that once an issue has been decided finally by this Court, which is not taken in appeal before higher

Court, the executive authority like respondent No. 2 has no occasion to make any observation to show an approach which is directly in the teeth

of what has been said by the Court in a final verdict. Respondent No. 2 had no authority but to proceed in the light of adjudication made by this

Court unless the judgment is otherwise interfered and upset by the superior Court. No Officer or an authority of Government, however high or

exalted, may take up upon himself responsibility of judging correctness or validity of the order of the Court. He also cannot disregard an

adjudication of an issue by the Court wherein he himself was a party. By adhering to the stand taken by respondent No. 2 in the earlier order

ignoring the fact that it has been set aside, i.e. his stand has been negated and having been interfered by the Court, respondent No. 2 yet by



referring and relying on non est order dated 23.3.2009, has shown a conduct which amount to lowering authority of this Court. By an overt and

patent act reflected in the words written by respondent No. 2, he has shown total disregard to an adjudication by the Court. A conduct like this

has been deprecated by the Apex Court in E.T. Sunup Vs. C.A.N.S.S. Employees Association and Another, , wherein the Apex Court said that

an attempt on the part of bureaucracy to circumvent order of the Court and stick to their stand amounts to clear violation of Court's order. Such

officer is guilty of flouting Court's order. The Apex Court also said, time and again it has emphasized that in democracy the role of Court cannot

be subserving to the administrative fiat. In another matter, the Apex Court held that such acts which are calculated to undermine authority of the

Court and disturb confidence of the citizen in unquestioned effectiveness of its orders, will have to be considered as contempt. Respondent No. 2

in referring, relying and elaborating what it has said in an order which has already been set aside by this Court has shown a conduct which is

derogatory to the dignity, majesty and authority of this Court. It shakes the confidence of reader, to the authority of law and the process through

which Court of law in the Country are supposed to administer justice.

26. Initially, I intended to proceed to draw contempt proceedings against petitioner and referring the matter before appropriate Court only to the

extent of dealing with the contempt matter, but considering request advanced on behalf of respondents to show magnanimity on this aspect and

give a chance to respondent No. 2 not to show such conduct in future, I do not proceed to initiate contempt proceedings but in my view the

conduct of respondent No. 2 in the present matter to handle the case in a manner which has caused serious harassment to the petitioner makes him

liable to pay an exemplary cost.

27. So far as non payment of retiral dues to petitioner for years together, respondents could not show any valid justification except of a highly

belated action on the part of authorities of Nagar Palika Parishad, Faizabad which is also extended to the authorities of State Government. Such

undue delay on the part of respondents in paying retiral benefits to an old retired employee has been commented and condemned for umpteen

times by Court at various level but it has gone in vain. It appears that still Government authorities have not meant their ways. This harassment is

going unabated. Such a huge and unreasoned delay is clearly illegal and arbitrary. In absence of any provision entitling the authorities concerned to

delay payment of retiral benefits to an employee, such inaction withholding of retiral benefits is ex facie illegal, arbitrary and smacks of malice in law

considering the financial position of such retired employee and also the helplessness and harassment, he would be facing in approaching the

authorities concerned frequently but without any result.

28. The attitude and conduct of the respondents borne out from the record is nothing but is reprehensible and should be condemned in strongest

words. It is no doubt true that an employer for just and valid reasons, and, in exercise of power vested in it can defer or deny pension and other

retiral benefits to an employee provided action of employer is in accordance with the procedure prescribed in law and such a power also emanates

from statute or the relevant provisions having force of law.

29. In our system, the Constitution being supreme, yet the real power vest in the people of India since 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 ex-employee who has served for a long time and has earned certain benefits under

the rules recoverable after attaining the age of superannuation. Pension and retiral benefits are not bounty but right of an employee crystallized in

deferred wages to which he is entitled under the rules after retirement and non-payment thereof is clearly violative of Article 21 of the Constitution

of India. Therefore, it becomes more important for the public functionaries and the authorities to act with better sense of responsibility so that their

ex-employee may not be subject to harassment at the old age when they have already retired and have to survive and maintain themselves and their

family with the meagre amount payable in the form of retiral benefits. The respondents being a State Government and function through its officers

appointed in various department is suppose to discharge his duty strictly in accordance with law as observed under our Constitution, sovereignty

vest in the people. Every limb of the 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 the 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 the entire machinery and the various powers of

the statute and an ordinary citizen or a common man is hardly equipped to match such might of the 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 the 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 the occasion otherwise the confidence of the

common man would shake. It is the responsibility of the 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 the arbitrary and arrogant unlawful inaction or

illegal exercise of power on the part of the public functionaries.

30. 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.

31. Regarding harassment of a Government employee, referring to observations of Lord Hailsham in *Cassell & Co. Ltd. v. Broome*, 1972 AC

1027 and Lord Devlin in *Rooks v. Barnard and others*, 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)

32. The above observation as such has been reiterated in Ghaziabad Development Authority Vs. Balbir Singh, .

33. In the case of Common Cause A Registered Society Vs. Union of India and others, , the Apex Court said as under:

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 the case of Shivsagar Tiwari Vs. Union of India (UOI) and Others, , the Apex Court has held as follows:

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 the case of 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 last 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

helpless 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 others (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 others v. M. Padmanaban 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

over-emphasized and it would not be unreasonable to direct that the liability to pay panel 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 others 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, writ petition is allowed with the following directions:

(a) Impugned order dated 6.9.2011 (Annexure 1 to writ petition) is hereby quashed.

(b) Entire amount due to petitioner, if not already paid, shall be paid within two months from the date of production of certified copy of this order

before the competent authority.

(c) On the amount of retiral dues paid to petitioner already and under this order, petitioner shall be entitled to interest at the rate of ten per cent per

annum which would commence from one month from the date of retirement till actual payment. The aforesaid interest shall be calculated and paid

alongwith other balance dues of petitioner.

(d) Petitioner shall also be entitled to cost which I quantify to Rs. 50,000/- against respondents 1 and 2. At the first instance, the amount of cost

shall be paid by respondent No. 1 but it shall be at liberty to recover not only the amount of cost but also the amount of interest, if any it would pay

to petitioner under this order, from the persons responsible for such delay and laxity after making such inquiry as permitted in law.