

(44) Further the persons who have been given time to make up the deficiency in the application forms are not before us. It is fundamental that not order adversely affecting such persons can be passed without affording an opportunity of hearing them. At the same time no relief can be given to the petitioners on the basis of illegal orders showing leniency to some others by granting time to make their applications complete.

(45) In view of my foregoing discussions, the decision of the Division Bench in *Saurabh Aggarwal v. Kurukshetra University* (30), and the decision in *Anurag Sharma v. Regional Engineering College, Kurukshetra* (31), do not lay down the correct law and they are, accordingly, overruled.

(46) The result is, the writ petitions fail and are, accordingly, dismissed. No costs.

R.N.R.

Before K. Sreedharan, C.J., N.K. Sodhi and T.H.B. Chalapathi, JJ

A.S. RANDHAWA,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWP 2883 of 97

16th May, 1997

Constitution of India, 1950 Art. 226-Pensionary benefits-Delayed payment-Interest not paid-Writ petition for payment of interest only-Maintainability of the writ petition.

Constitution of India, 1950-Art.226-Retiral benefits-Valuable rights of an employee.

(State of Punjab vs. Jarnail Singh, LPA 1511 of 89 decided on 20th November, 1989 and Daulat Ram Tirlok Nath vs. State of Punjab and others, 1976 PLR 708 distinguished.)

Held that, right to pension is a right to property and not a bounty to be paid on the sweet will and pleasure of the Government. It may or may not be a fundamental right but, it is definitely a constitutional right being a right to property and also a statutory right governed by the Pension Rules. This being so, a retired government employee has, beyond doubt, a right to approach this court for the issuance of a writ of mandamus or for any other order or direction to enforce his legal right to claim pension or

(30) 1995 (1) S.L.R. 80

(31) 1996 (1) R.S.J. 795

any other retiral benefits the disbursement of which may have been unjustifiably withheld by the State.

(Para 7)

Further held, that right to claim interest partakes the nature and character of the retiral benefits and is indeed a concomitant of the right to claim pension and retiral benefits and cannot be separated therefrom. This being so, a claim for interest by a pensioner cannot be equated with a claim for money simpliciter or any interest thereon arising out of contractual obligations. A writ petition is maintainable for claiming interest only on delayed payment of pension and other retiral benefits to which a retired Government employee is entitled under the Civil Service Rules relating to pension and provident fund.

(Paras 10 & 17)

JUDGEMENT

N.K. SODHI, J.

(1) The common question of law that arises for determination in this bunch of nine cases is whether a writ petition is maintainable for claiming interest only on delayed payment of pension and other retiral benefits to which a retired government employee is entitled under the Civil Service Rules relating to pension and provident fund. Since arguments were addressed in CWP 2883 of 1997 facts giving arises to this petition in so far as they are relevant may briefly be noticed.

(2) Petitioner retired from the post of Superintending Engineer on superannuation on 29th February, 1992. On the basis of his last/average pay of Rs. 6300 per month he was entitled to a monthly pension of Rs. 3150 and another sum of Rs. 1,00,000 as death-cum-retirement gratuity (DCRG) both of which became due on 1st March, 1992. In addition to these amounts, he was further entitled to commuted value of pension (CVP) of Rs. 1,31,796 being the permissible limit of 1/3rd commutation. Although there was no impediment in the matter of determination and release of pensionary dues to the petitioner, yet on account of the usual administrative apathy the matter was shelved and it was only after the petitioner had put in lot of efforts that a provisional pension was released to him on 3rd September, 1992. This too was paid till October, 1992 and thereafter discontinued. On the repeated representations of the petitioner the Chief Engineer, Canals took up the matter with the controlling authority and advised the latter on 5th January, 1993 to continue paying the provisional pension till the regular pension was sanctioned. The Accountant Gereral, Punjab too took another two years and issued on 12th January, 1995 the necessary certificate and report on the admissibility of pension to the petitioner. A monthly pension of Rs. 3150 was sanctioned w.e.f. 1st March, 1992. This certificate was followed by a 'pension payment order' which was furnished to the Treasury Officer, Patiala for necessary action. It was in the end of

January, 1995 that pension as well as CVP were actually disbursed to the petitioner. DCRG was released on 27th April, 1995. Since the pension and the other retiral benefits were not paid on time and there was unjustified delay in releasing the same, the petitioner served a demand notice on the respondents claiming interest @ 18% per annum on the delayed payments. The department paid no heed to this notice and therefore the present petition was filed claiming interest on the delayed payment of pension and other retiral benefits.

(3) The Motion Bench ordered this case to be listed along with CWP 16775 of 1995 wherein also a similar claim had been made by the petitioner therein. When CWP 16775 of 1995 came up for motion hearing the Division Bench noticed a conflict between two sets of Division Bench Judgments of this Court one taking the view that writ petition was maintainable for claiming interest on the delayed payment of retiral benefits whereas in the other, this court took the view that such a petition was not maintainable for claiming interest only. The Bench then admitted the writ petitions to be heard by a Full Bench. This is now the matter has been placed before us for decision.

(4) It is by now well settled by a catena of judgments of the Apex Court approving the view expressed by this court that pension payable to a retired government servant is no longer a bounty which is payable on the sweet will and pleasure of the government. It has been held to be a valuable right which flows to such an employee by virtue of the rules which governed his employment. Reference in this regard be made to *Deokinandan Prasad v. State of Bihar and others* (1), wherein their Lordships of the Supreme Court expressed this view. The learned Judges after referring to the material provisions in the pension rules further held that the grant of pension did not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may become necessary for the authorities to pass an order to that effect but the right to receive pension flows to the government servant not because of the said order but by virtue of the rules which have a statutory force. The same view expressed by the Supreme Court in *State of Kerala and others v. M. Padmanabhan Nair* (2), the Supreme Court reiterated its earlier view and it will be of interest to quote the following observations from this judgment :—

“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

(1) A.I.R. 1971 S.C. 1409

(2) A.I.R. 1985 S.C. 356

and property in their hands and any culpable delay in settlement and disbursement there of must be visited with the penalty of payment of interest at the current market rate till actual payment.”

(5) Thus, a right to pension has been held to be a right in property and till the Constitution (Forty Fourth Amendment) Act, 1978 was brought into force, property right was a fundamental right under Article 19 (1) (f) of the Constitution. After the enforcement of the said amendment property right is no longer a part of fundamental rights and has been provided for as a constitutional right in Article 300-A and in terms thereof no person can be deprived of his property save by authority of law.

(6) A learned Single Judge of this Court in *Maha Singh Sinhar v. State of Haryana* (3), relying upon the observations of the Supreme Court in *Delhi Transport Corporation v. D.T.C. Mazdoor Congress* (4) and *D.K. Yadav v. J.M.A. Industries Limited* (5) has held that the right to life as enshrined in Article 21 of the Constitution is wide enough not only to include the right of employment as part of right to life but also the incidental right to pension.

(7) There is, thus, no doubt and in fact it was conceded before us by the learned advocate General appearing for the respondents that right to pension is a right to property and not a bounty to be paid on the sweet will and pleasure of the Government. It may or may not be a fundamental right but, it is definitely a constitutional right being a right to property and also a statutory right governed by the Pension Rules. It is common case of the parties that the right to receive pension by the petitioner is governed by the rules contained in the Punjab Civil Service Rules, Vol. II framed under proviso to Article 309 of the Constitution. This being so, a retired government employee has, beyond doubt, a right to approach this court for the issuance of a writ of mandamus or for any other order or direction to enforce his legal right to claim pension or any other retiral benefits the disbursement of which may have been unjustifiably withheld by the State.

(8) The duty of the State to disburse pension immediately on the retirement of an employee has a statutory recognition and it is so enjoined in Rule 9.1 of the Pension Rules (as applicable in the State of Haryana) which is in the following terms :—

“All authorities dealing with applications for pension under these rules should bear in mind that delay in the payment of pensions

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- (3) 1995 (1) R.S.J. 643
(4) 1991 (1) R.S.J. 152
(5) 1993 (3) R.S.J. 696

involves peculiar herdship. It is essential to ensure, therefore, that a Government employee begins to receive his pension on the date on which it becomes due.

Note.— In order to prevent cause for complaint on the part of pensioner, it is most important that pension cases should always be given as high a degree of priority as is possible.”

The pension rules in Punjab also provide that lest there is any delay in disbursing pension to a retiring employee the procedure for the payment thereof and the work of preparation of pension papers should commence two years before the due date of retirement of the employee. Reference in this regard may be made to Rule 9.3 and other related rules contained in Chapter IX of the Punjab Civil Service Rules Vol. II as applicable in the State of Punjab.

(9) Since a Government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in *M. Padmanabhan Nair's case* (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement. Again, as to what should be the rate of interest, it should, in our view, be generally 12% unless the circumstances of a particular case warrant the payment of a higher rate which may extend to even 18%.

(10) The question that now arises for our consideration is whether a retiree can approach this Court under Article 226 of the Constitution to claim interest only on the delayed payment of pension and other retiral benefits. As observed earlier, there is a duty cast on the State to disburse pension and retiral benefits immediately when they become due and it is the non-performance of this statutory duty which gives rise to the retiree to claim compensation by way of interest. This right to claim interest partakes the nature and character of the retiral benefits and is indeed a concomitant of the right to claim pension and retiral benefits and cannot be separated therefrom. This being so, a claim for interest by a pensioner cannot be equated with a claim for money simpliciter or any interest thereon arising out of contractual obligations. Moreover, in a claim for recovering pension or other retiral benefits which the State has wrongfully withheld

or even interest is claimed on those amounts, the plea of bar of limitation cannot be permitted to be raised because the State has defaulted in the performance of its duty in not paying the amount when it became due. In this view of the matter, it follows that when a retired government employee can seek his remedy by invoking the jurisdiction of this court under Article 226 of the Constitution to claim pension and retiral benefits by the issuance of a writ of mandamus or any other order or direction, he is equally entitled to seek relief in the same way for claiming interest only on delayed payments which is an enforcement of an incident of the same right. It will, of course, be open to the State to plead and prove that there has been no delay muchless culpable delay on its part in disbursing the amount so as to entitle a retired employee to any interest as claimed by him. To put it differently, if a retired government employee can show that there was delay in the payment of pension or any other retiral benefit to him, the onus would be on the State to show that it is not guilty of any culpable delay and if it is unable to discharge the onus or satisfy the court as to the reasons for the delay a direction to pay interest for the period of delay would invariable issue.

(11) In *A.K. Kapoor v. State of Haryana and others* (6), a Division Bench of this court had an occasion to examine a similar issue as to whether the High Court in the exercise of its powers under Article 226 of the Constitution could issue a direction to the State to pay interest where the payment of retiral benefits was delayed for no justifiable reasons. The State in cases before the division Bench had raised a preliminary objection to the effect that claim for grant of interest on delayed pensionary benefits could not be agitated in writ jurisdiction under Article 226. The preliminary objection was over-ruled and the question was answered in the affirmative with the following observations :—

“Even otherwise we are of the considered view that the High Court in its powers under Articles 226/227 of the Constitution of India has every power to grant a discretionary relief particularly if the same flows from undisputed facts or if the defence is raised only for the purpose of raising defence and in fact, and reality it has no substance in it. Depending upon the facts of each case, if the Court comes to a conclusion that the retiral benefits were delayed for no justifiable reason whatsoever, the High Court would be well within its jurisdiction to compensate a citizen. Non-doing of the same would amount to lowering the human values which must be preserved and it is the duty of the Court to enforce the obligation of the Government to promptly pay pension and other post retiral benefits to a

retiring servant which cannot be allowed to drag any one through the much of humiliation, we unhesitatingly, thus, reject the preliminary objection raised by the respondent-State.”

Since the court came to the conclusion that there was no justification in causing delay in the disbursement of the pensionary benefits, the State was directed to pay interest at the rate of 12%. In our opinion, the Division Bench correctly held that a claim for the grant of interest on delayed pensionary benefits was maintainable in a petition filed under Article 226 of the Constitution.

(12) A similar view was taken by another Division Bench in *Moti Ram Gupta v. State of Haryana and another* (7), following *A.K. Kapoor's case* (supra). In this case, the petitioner therein was held entitled to interest @18% per annum. In *Des Raj Pahwa v. State of Punjab* Civil Writ Petition 436 of 1982 decided on February 19, 1985, a learned Single Judge took the view that in the exercise of equitable jurisdiction of this court a direction could be issued to the State to pay interest on delayed payment of retiral benefits.

(13) In *R. Kapoor v. Director of Inspection, Income-tax and another* (8), the appellant therein retired as Director General of Income-tax on 28th February 1986. The death-cum-retirement gratuity due to him on retirement was withheld because a claim for damages for unauthorised occupation of government accommodation was pending against him. He filed a petition before the Central Administrative Tribunal which exercises powers analogous to the powers of this court under Article 226 of the Constitution, claiming that the retiral benefits could not be withheld. The claim was allowed along with interest @ 10%. Allowing the appeal as to the rate of interest, their Lordships of the Supreme Court allowed interest @ 18% and while so directing reliance was placed on the observations made in *M. Padmanabhan Nair's case* (supra).

(14) We may now examine the judgements referred to in the order of reference which have taken a different view.

(15) In *State of Punjab v. Jarnail Singh*, Letters Patent Appeal 1511 of 1989 decided on November 20, 1989 the writ petitioners were working as Surveyors on *ad hoc* basis when their services were terminated. They challenged their order of termination in this court and the writ petitions were dismissed. The matter was taken in appeal to the Supreme Court which was allowed and the order terminating the services quashed and they were directed to be re-instated. In compliance with the directions of

(7) 1993 (1) R.S.J. 799

(8) 1994 (6) S.C.C. 589

the Supreme Court the State Government re-instated the writ petitioners and also paid them back wages. Their claim for regularisation of their services was not favourably considered by the State which prompted them to file the writ petition out of which the letters patent appeal had arisen. They also made a prayer that they be allowed interest @ 12% on the arrears which had been paid to them. This claim was allowed by a learned Single Judge and in appeal the learned Judges constituting the Division Bench set aside that part of the order whereby interest was allowed to them on delayed payment of arrears of pay. The question that was considered by the learned Judges was whether a writ petition could be filed for claiming interest on back wages when no such interest was allowed while allowing the back wages but were paid as a consequence of the order of termination being set aside. It was observed that under those circumstances neither under the law nor in equity the petitioners therein were entitled to invoke the jurisdiction of this court under Article 226 of the Constitution claiming interest of the amount of back wages paid by State itself without there being any direction in this behalf by the Supreme Court. The learned Judges noticed *Des Raj Pahwa's case* (supra) but distinguished it on the ground that it related to non-payment of pension and salary. Similarly, other cases in which interest had been granted on account of non-payment of pension in time were distinguished by the Judges. In our opinion, the judgement in *Jarnail Singh's case* (supra) is distinguishable and is no authority for the proposition that interest cannot be claimed on delayed payments of pensionary benefits in a petition filed under Article 226 of the Constitution. Moreover, in *Jarnail Singh's case* (supra) the claim was for interest on non-payment of salary in time which arose on account of contractual obligations. *Jarnail Singh's case* does not, therefore, advance the case of the respondents.

(16) Our attention was also drawn to a Full Bench judgement of this court in *Daulat Ram Tirlok Nath v. State of Punjab and others* (9), to contend that a claim for money simpliciter cannot be made in a writ of mandamus and that the petitioner should be asked to make such a claim before a civil court. In that case the rate of market fee was enhanced by amending Section 23 of the Punjab Agricultural Produce Markets Act and the amendment was challenged in a spate of writ petitions filed in this court. The amending Act enhancing the rate of levy was struck down as unconstitutional. It was thereafter that the dealers of agricultural produce who had paid the enhanced market fee filed petitions in this court for the refund of unspecified sums of money which had been alleged to have been paid by them under the mistake of law or fact to the market committees. The Full Bench took the view after noticing the observations of the Apex

Court in *Suganmal v. State of Madhya Pradesh*, (10), that a writ of mandamus was not competent for the purpose of obtaining the refund of money due from the State on account of its having made illegal exactions. The respondents in such a case may have appropriate defences available to them like that of limitation and it is not proper to adjudicate such matters in a petition under Article 226. This case has no bearing on the question before us. In the cases before us, the fact that there has been delay in the payment of retiral benefits is not disputed and, in our opinion, no explanation, muchless a satisfactory explanation, has been furnished for the delay and since the right to claim interest on such delayed payments, as already observed earlier, is a part of the right to claim pension itself, the observations of the Full Bench in *Daulat Ram Tirlok Nath's case* (supra) are of no help to the respondents.

(17) In the result, we answer the question posed in the earlier part of the judgement in the affirmative and hold that a writ petition is maintainable for claiming interest only on delayed payment of pension and other retiral benefits to which a retired government employee is entitled under the Civil Service Rules relating to pension and provident fund.

(18) Before concluding, we are constrained to observe that it has been noticed that invariably in the matter of payment of pension and other retiral benefits to a retiring employee there have been delays and sometimes to an extent that is shocking. It must be realised by the concerned functionaries of the State at all levels that for a government servant, the only source of his subsistence after retirement is his pension and other retiral benefits and if they are not made available to him on time, he and his family are put under great mental tension making it difficult for them even to survive. Those dealing with the preparation of pension cases at different stages and with disbursement of retiral benefits must not forget that they too have to retire one day and will be looking up for the payment of those benefits and how will they feel if they are driven from pillar to post to get their dues and if hurdles are put and delay is caused in payment thereof. It is to save this harassment to the retired that the Rules require that the procedure to commute pension and retiral benefits should commence two years before the date of superannuation so that whatever be the apathy or the inefficiency of the concerned officials in working out the amounts, they will be able to complete the cases atleast in two years and pay the dues to the retirers. If inspite of these safeguards as provided in the Rules the working of the administrative officers at different levels high or low is so indifferent in the performance of their duties as enjoined on them it is but fair that those responsible for causing delays in the matter of payment of retiral benefits should be made personally liable for the

(10) A.I.R. 1965 S.C. 1740

payment of interest that may have to be paid to the retiring employee. The loss caused to the State exchequer by avoidable payment of interest must, therefore, be replenished by recovering the same from the erring officers/employees, the extent and proportion of which will be determined in each case by the Chief Secretary of the State.

(19) In the cases before us there is no satisfactory explanation for the delay in disbursing the retiral benefits to the petitioners and they are, therefore, entitled to interest at the rate of 12% per annum for the period of delay on the amounts as paid to them. The writ petitions are accordingly allowed and the respondents directed to pay interest as aforesaid within 3 months from the date of receipt of a copy of this order. The Chief Secretaries of the two State Governments of Punjab and Haryana are further directed to fix the responsibility of the erring officers/officials in each case pertaining to their State in regard to the delay caused in the disbursement of retiral benefits to the petitioners and recover the amount of interest from them so that there is no loss caused to the State exchequer for their default. A copy of this judgement be sent to the Chief Secretaries of the States of Punjab and Haryana for information and necessary action.

S.C.K.