

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 4269 of 2023

Shrawan Kumar Das Petitioner

Versus

1. The State of Jharkhand through the Secretary / Principal Secretary, School Education and Literacy Department, Ranchi.
2. The Divisional Commissioner, Santhal Pargana, Dumka.
3. The Deputy Commissioner-cum-Chairman, District Education Establishment Committee, Pakur.
4. The District Superintendent of Education, Pakur.

... .. Respondents

CORAM : HON'BLE DR. JUSTICE S.N. PATHAK

For the Petitioner : Mr. Manoj Tandon, Advocate
Ms. Neha Bhardwaj, Advocate
For the Respondents : Mr. Awanish Shankar, AC to AAG-I

6/ 22.04.2024 Heard the parties.

2. The petitioner retired from the post of Assistant Teacher on 31.01.2023 is seeking a direction upon the respondents for payment of entire pensionary benefits including pension, gratuity, GPF, GIS, leave encashment etc. The petitioner has also prayed for salary from 08.08.2017 to 23.01.2019 minus subsistence allowance, as also the salary from 02.07.2020 till the date of retirement in view of the fact that the order of dismissal was set aside by the appellate authority.

3. The specific case of the petitioner, as argued by Mr. Manoj Tandon, learned counsel for the petitioner is that the petitioner was dismissed from service by Memo No. 840 dated 02.07.2020 and thereafter upon challenge thrown by the petitioner, the same was quashed and set aside by the appellate authority on 6.1.2022. Thereafter, the petitioner stood retired on 31.01.2023. When the admitted retiral benefits including the consequential benefits, such as full salary during the suspension period, as also the full salary from the date of passing of the dismissal order till the date of retirement were not extended, the petitioner has constrained to knock the door of this Court.

4. In the present case, several orders were passed directing the respondents to explain as to why the petitioner is not entitled for the retiral

benefits after quashment of the order of dismissal by the appellate authority. The plea of the respondents, as argued by Mr. Awanish Shekhar, learned counsel representing the respondent-State is that yet no decision has been taken for granting the benefits and therefore, the retiral benefits could not be extended.

5. This Court fails to understand that under which authority of law, the entire admitted retiral benefits of an employee can be withheld when the order of dismissal has been quashed and set aside by the appellate authority, that too when no appeal / revision has been preferred by the Department. The respondents are taking flimsy stand, which is not acceptable to this Court. This is yet another glaring example of delay and laches on the part of the respondents for not extending the retiral benefits. Even the admitted dues have not been paid to the employee who retired on 31.1.2023 itself. Almost a year has passed. The poor employee is being harassed at the hands of the respondents. This Court, in plethora of judgments, has held that the pensionary benefits are not the bounty to be distributed at the sweet-will of the Authorities. It is the Constitutional and fundamental right of an employee to receive the retiral benefits, if there are no legal impediment. Nothing has been brought on record to show that either a criminal case or a departmental proceeding was pending against the petitioner. It is totally due to lethargic and lackadaisical approach of the respondents, the petitioner has been subjected to hardship and has suffered a monetary loss which makes the respondents liable to pay interest on the due amount at an appropriate rate to compensate the petitioner.

6. In this context, the Hon'ble Supreme Court in the case of State of *Kerala Vs. M. Padmanabhan Nair*, reported in (1985) 1 SCC 429 held as follows:-

“1.(the) pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment (to the employees) ’.

7. Further the Hon'ble Supreme Court in the case of *D.D. Tewari*

(Dead) through Legal Representatives Vs. Uttar Harayan Bijli Vitran Nigam Limited & Ors., reported in (2014) 8 SCC 894 held as follows:-

“6. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned Single Judge after adverting to the relevant facts and the legal position has given a direction to the respondent employer to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgment referred to supra. We have to award interest at the rate of 8% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.”

8. Similar issue has been decided by the Hon’ble Apex Court in case of ***State of Andhra Pradesh & Anr. vs. Dinavahi Lakshmi Kameswari*** reported in (2021) SCC OnLine SC 237 wherein it is held that salaries and pensions are "rightful entitlements" of government employees and in case of delay, they should be paid with interest at an appropriate rate. The relevant paragraphs of said judgment is reproduced herein below:

“14. The direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. Likewise, it is well settled that the payment of pension is for years of past service rendered by the pensioners to the State. Pensions are hence a matter of a rightful entitlement recognised by the applicable rules and regulations which govern the service of the employees 10 of the State. The State Government has complied with the directions of this Court for the payment of the outstanding dues in two tranches. Insofar as the interest is concerned, we are of the view that the rate of 12% per annum which has been fixed by the High Court should be suitably scaled down. While learned counsel for the respondents submits that the award of interest was on account of the action of the Government which was contrary to law, we are of the view that the payment of interest cannot be used as a means to penalize the State Government. There can be no gainsaying the fact that the Government which has delayed the payment of salaries and pensions should be directed to pay interest at an appropriate rate.

15. We accordingly order and direct that in substitution of the interest rate of 12% per annum which has been awarded by the High Court, the Government of Andhra Pradesh shall pay simple interest computed at the rate of 6% per annum on account of deferred salaries and pensions within a period of thirty days from today.”

9. As a sequitur to the aforesaid observations, rules, regulations, guidelines and judicial pronouncements, I hereby direct the respondents to pay all retiral benefits including pension with interest at the rate of 6% per annum simple interest on the delayed payment of retiral benefits including the consequential benefits which were supposed to be paid upon quashment of the dismissal order by the appellate authority, from the date of entitlement till the date of the actual payment. It is made clear that if the amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date of amount fallen due to the petitioner till date of actual payment.

10. With the aforesaid observations and directions, this writ petition stands allowed.

(Dr. S. N. Pathak, J.)

R.Kr.