



2026:AHC-LKO:14640

AFR

Reserved

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**WRIT - A No. - 9735 of 2016**

Mishri Lal

.....Petitioner(s)

Versus

State Of U.P. Thru Prin.Secy. P.W.D. Civil Sectt.  
Lko. And Ors

.....Respondent(s)

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Counsel for Petitioner(s) : Anurag Srivastava, Navneet Awasthi,  
Raj Kumar Verma  
Counsel for Respondent(s) : C.S.C., Ram Ratan, Shishir Jain

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**Court No. - 18**

**HON'BLE SHREE PRAKASH SINGH, J.**

1. Heard learned counsel for the petitioner, Mr. Shishir Jain, learned counsel for the respondent-U.P.State Bridge Corporation Ltd.,(hereinafter referred to as 'Corporation'), Mr. Brijendra Singh, learned Additional Chief Standing Counsel and Mr. Ashutosh Mishra, learned Standing Counsel for the State and perused the record.

2. The present writ petition has been preferred assailing the order dated 02-03-2016 passed by the Managing Director of the respondent-corporation, whereby the petitioner has been declined the benefit for payment of interest over the delayed payment of retiral dues and the benefit of the recommendations of the Sixth Pay Commission, which was granted to the employees of the respondent-corporation by virtue of the government order dated 26-03-2010.

3. Contention put forth by the learned counsel for the petitioner is that the petitioner was appointed in the respondent-corporation on 09-01-1979, on the post of Sub. Engineer at district-Ghaziabad and his work and conduct was always above board and remained unblemished. He submitted that the petitioner was promoted in the month of October, 1997

on the post of Deputy Project Manager and he was posted at district-Lucknow and subsequently, in the month of May,2003, the petitioner was again promoted on the post of Project Manager. He added that the petitioner has been retired on 31-07-2007 after attaining the age of superannuation and after the retirement, when the retiral dues were not paid to the petitioner, he moved an application on 11-10-2007, before the Managing Director of the respondent-corporation, and the department paid the retiral dues in the year 2014, after passing of about 7 years, but, the interest on the delayed payment of gratuity and the leave encashment etc. have not been paid.

4. Further submission is that the recommendations of the Sixth Pay Commission are prevalent in the respondent-corporation w.e.f. 01-01-2006, which is apparent from the government order dated 26-03-2010 and the benefit of the aforesaid recommendations has been given to the petitioner only w.e.f. 26-03-2010, though he is entitled for the said benefit started from the date of it's commencement i.e. 01-01-2006. He argued that once the authority did not pay any heed to make payment of interest, the petitioner approached this court by way of instituting Writ Petition No. 1838(S/B) of 2015, wherein the final Judgment and Order was passed on 01-10-2015 while directing the Managing Director of the respondent-corporation to take the decision on the claim of the petitioner within the period of three months and the Managing Director of the respondent-corporation vide order dated 02-03-2016 impugned herein, has rejected the claim of the petitioner for payment of the interest, erroneously and arbitrarily.

5. Adding his arguments, he submitted that it is an admitted fact in between the parties that the payment of retiral dues have been done in the year 2014, though the petitioner has been retired in the year, 2007 and therefore, the petitioner is infact entitled for interest for that period of time. He also submitted that so far as the payment of arrears of benefit of recommendation of Sixth Pay Commission, started from the year 2006 to the year 2010, is concerned, the claim of the petitioner is covered with the ratio of the Judgment rendered by the Hon'ble Apex Court in the case of **Union of India Vs Balbir Singh Turn**, reported in **AIR 2018 SC 206**. The relevant paragraph 11 is extracted as under:-

*"11. We are only concerned with the interpretation of the Resolution of the Government which clearly states that the recommendations of the 6th CPC as modified and accepted by the Central Government insofar as they relate to pay structure, pay scales, grade pay, etc. will apply from 1-1-2006. There may be some gainers and some losers but the intention of the Government was clear that this Scheme which is part of the pay structure would apply from 1-1-2006. We may also point out that the Resolution dated 30-8-2008 whereby the recommendation of the Pay Commission has been accepted with modifications and recommendations with regard to pay structure, pay scales, grade pay, etc. have been made applicable from 1-1-2006. This is a decision of the Cabinet. This decision could not have been modified by issuing executive instruction. The letter dated 30-5-2011 flies in the face of the Cabinet decision reflected in the Resolution dated 30-8-2008. Thus, administrative instruction dated 30-5-2011 is totally ultra vires the Resolution of the Government."*

6. Referring the paragraph no. 11 of the aforesaid Judgment, learned counsel for the petitioner submitted that the Hon'ble Apex Court has held that so far as the executive orders are concerned, that will not have override effect over the decision taken by the legislature and therefore, the benefit was granted to those petitioners with effect from the actual commencement of the Sixth Pay Commission.

7. Concluding his arguments, he submitted that the petitioner is entitled for the interest on the delayed payment of the retiral dues and therefore, the order dated 02-03-2016 is unsustainable.

8. Per contra, Mr. Shishir Jain, learned counsel appearing for the respondent-corporation has opposed the contentions aforesaid and submitted that so far as the application dated 11-10-2007, said to be submitted by the petitioner is concerned, that has never been received in the office of the respondent-corporation and in this regard, the specific stand is taken in paragraph no. 5 of the Supplementary Affidavit dated 13-08-2024.

9. He further submitted that so far as the Payment of Gratuity Act, 1972 (hereinafter referred to as 'Act, 1972') is concerned, Form No. 'T' is prescribed for claiming the gratuity and the petitioner has never submitted this Form No. 'T' before the employer and as soon as the formalities were completed, in the year, 2014, the payments were made to the petitioner.

10. He argued that so far as the payment of arrears of Sixth Pay Commission w.e.f. 01-01-2006 is concerned, that is not available to the

petitioner as the state government in its order dated 26-03-2010, itself has clarified the position and therefore, the actual benefit has been provided since the date of the government order dated 26-03-2010. Thus, there is no erroneousness in the order impugned dated 02-03-2016, wherein the decision has been taken that the petitioner is not entitled for such benefits, therefore no interference is warranted, in this matter.

11. Upon considering the submissions of learned counsels for the parties and after perusal of records, it borne out that the claim of the petitioner is of two folds; First, whether the petitioner is entitled for the interest on the delayed payment of the retiral dues, including the gratuity and leave encashment started from the year 2007 to the year 2010 ? Secondly, whether the entitlement of the petitioner for the benefit of the recommendations of Sixth Pay Commission, w.e.f. 01-01-2006 has been rightly declined .

12. The law regarding the payment of gratuity to an employee is codified under the Payment of Gratuity Act,1972(hereinafter referred to as 'Act,1972').

13. Section 7 of the Act, 1972 provides for determination of the amount of gratuity. Section 7 of the Act, 1972, reads as under:-

*“7. Determination of the amount of gratuity.-(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.*

*(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.*

*[(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.*

*(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from*

*time to time for repayment of long-term deposits, as that Government may, by notification specify:*

*Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]*

*(4)(a) If there is any dispute to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.*

*(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.*

*(c)] The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.]*

*[(d)] The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.*

*[(e)] As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit-*

*(i) to the applicant where he is the employee; or*

*(ii) where the applicant is not the employee, to the "Inominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.*

*(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following*

*matters, namely:-*

*a) enforcing the attendance of any person or examining him on oath,*

*(b) requiring the discovery and production of documents:*

*(c) receiving evidence on affidavits;*

*(d) issuing commissions for the examination of witnesses.*

*(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228. and for the purpose of section 196, of the Indian Penal Code (45 of 1860).*

*(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:*

*Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:*

*[Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.]*

*(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify, or reverse the decision of the controlling authority.”*

14. From bare reading of the provision of Section 7(1) of the Act, 1972, it reveals that the same provides that a person who is eligible for payment of gratuity, shall send a written application to the employer. The form of the application is appended as Form ‘I’, meaning thereby that as soon a person becomes eligible for payment of gratuity under the ‘Act, 1972’, he himself or by authorising some other person, shall submit a written application to the employer within the time prescribed under the ‘Act,

1972’.

15. Form ‘I’ as prescribed under the “Act, 1972”, is extracted hereinunder :-

*FORM 'I'*

*[See sub-rule (1) of rule 7]*

*APPLICATION OF GRATUITY BY AN EMPLOYEE*

*To.....*

*[Give here name or description of the establishment with full address]*

*Sir/Gentlemen,*

*I beg to apply for payment of gratuity to which I am entitled under sub-section (1) of retirement/resignation after completion of not less than five years of continuous service/section 4 of the Payment of Gratuity Act, 1972 on account of my superannuation/total disablement due to accident/total disablement due to disease with effect from the Necessary particulars relating to my appointment in the establishment are given in the statement below:*

*Statement*

- 1. Name in full.*
- 2. Address in full.*
- 3. Department/Branch/Section where last employed.*
- 4. Post held with Ticket No. or Serial No., if any.*
- 5. Date of appointment.*
- 6. Date and cause of termination of service.*
- 7. Total period of service.*
- 8. Amount of wages last drawn.*

*9. Amount of gratuity claimed.*

*I was rendered totally disabled as a result of*

*[Here give the details of the nature of disease or accident]*

*The evidences/witnesses in support of my total disablement are as follows:*

*[Here give details]*

*Payment may please be made in cash/open or crossed bank cheque.*

*As the amount of gratuity payable is less than rupees one thousand, I shall request you to arrange for payment of the sum due to me by Postal Money Order at the address mentioned above after deducting postal money order commission therefrom.*

*Place....*

*Yours faithfully,*

*Date.....*

*Signature/Thumb impression  
of the applicant employee.*

*Note.-1. Strike out the words not applicable.*

*2. Strike out paragraph or paragraphs not applicable.”*

16. This provision in the considered opinion of this court, is mandatory and the reason behind it is that the aforesaid Form ‘I’ prescribes certain statements/information furnished by the retired employee to the employer. These are not the simple statements/information, but, this is in the form of an undertaking, which is given to the employer. Apart from the information, the undertaking is also to be given that ‘in an event, if the petitioner is disabled, as a result of some disease or accident and the evidences and witnesses are also to be given in case of total disablement’. It is also to be undertaken by the employee that the ‘payment may please

be made in cash/open or crossed bank cheque’.

17. Rule 7 of the U.P. Payment of Gratuity Rules, 1975(hereinafter referred as ‘Rules,1975’) is reproduced herein below;

*“7. Application For gratuity Section 7.-(1) An employee who is etigible for payment of gratuity under the Act, or any person authorised, in writing, to act on his behalf, shall apply, ordinarily within thirty days from dne date the gratuity became payable, in Form 'T' to the employer:*

*Provided that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement.*

*(2) A nominee of an employee who is eligible for payment of gratuity wider the second proviso to sub-section (1) of Section 4 shall apply, ordinarily within thirty days from the date the gratuity became payable to him, in From 'y to the employer:*

*Provided that an application in plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.*

*(3) A legal heir of an employee who is eligible for payment of gratuity under the second proviso in sub-section (1) of Section 4 shall apply, ordinarily within one year from the date the gratuity became payable to him, in Form 'K' to the employer.*

*(4) Where gratuity becomes payable under the Act before the commencement of these rules, the period of limitation specified in sub-rules (1), (2) and (3) shall be deemed to be operative from the date of such conunencement.*

*5) An application for payment of gratuity filed after the expiry of the period specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling authority for his decision.*

*(6) An application under this rule shall be presented to the employer either by personal service or by registered post acknowledgment due”*

18. When this court examines the matter, it is apparent that the petitioner has claimed that he has made an application, on 11-10-2007, for payment of all the retiral dues, whereas this has specifically been denied by the employer-respondent corporation in paragraph no. 5 of the Supplementary Affidavit that no such application has ever been received in the office of the Managing Director.

19. There is no assertion all over in the writ petition that such application is submitted in the year 2007 by the petitioner to the respondent-corporation and as per the submission of learned counsel for the respondent-corporation, all the formalities were fulfilled in the year 2014 and the retiral dues were paid in the year,2014 itself.

20. Section 7(2) of the 'Act, 1972' fastens the liability upon the employer to determine the amount of gratuity and further to give a notice in writing to the person, who is entitled for gratuity and the same has also to be informed to the controlling authority. Section 7(2) of the 'Act,1972' reads as under :-

*“7. Determination of the amount of gratuity.-(1).....*

*(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.”*

21. The petitioner has taken no specific pleading in all over the writ petition regarding non compliance of the mandate of section 7(2) of the 'Act,1972', by the employer, whereas, upon a question asked by the court, the counsel for the respondents has stated that though the amount of gratuity has been determined and the same has also been intimated to the controlling authority, but, what is lacking is that the notice to the empoyee/petitioner, has not been furnished. The provision is very obvious in it's term that there are three stages of the mandate of Section 7(2) of the 'Act, 1972'. First that the employer shall determine the amount of gratuity; second is that a notice shall be given in writing to the person, who is entitled for such gratuity and third is that the computation of gratuity shall also be brought into the notice of the controlling authority. What is apparent is that the procedure as prescribed under the provision of

Section 7(2) of the 'Act,1972' has not properly been undertaken, as no notice has been given to the petitioner by the employer department.

22. It is trite law that retiral benefits are not a bounty to be distributed by the Government to its employees after their retirement, but these are valuable rights and property in the hands of the retired employees. In fact, non-payment of retiral dues is the harassment of the retired employee, who rendered his services with dedication and devotion, and if the retiral dues are paid with inordinate delay, suitable interest in a compensatory nature shall suffice the purpose so as to solace harassed employee. The procedure established by law, in fact, does not permit someone to escape from any lawful duty, causing injury to the person, who is entitled to some lawful dues.

23. This Court is aware of the law rendered in the case of **State of Kerala Vs. M. Padmanabhan Nair, reported in (1985) 1 SCC 429**. The relevant paragraph of the judgment is extracted as under:-

*"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]."*

24. The Hon'ble Apex Court, while dealing with identical issue, has held in the abovenoted case that payment of post terminal dues are the valuable rights and property and an unreasonable delay in such payment creates liability to penal interest.

25. The law rendered in the case of **Delhi Development Authority Vs. Skipper Constructions**, reported in **1994(23) ALR 40 (SC)**, the Hon'ble Supreme Court, has held as under:-

*"A democratic Government does not mean a lax Government. The rules of procedure and/or principles of natural justice are not mean 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 de grind steadily and grind well and truly. The Justice system cannot be allowed to become soft, supine and spineless."*

26. It has been held by the Hon'ble Apex Court that no procedure can be left to be open to permit anyone to delay or defeat just retribution, meaning thereby that if things are not undertaken within a reasonable period of time and extraordinary delay is caused, the person standing at the other end should not be left to suffer. The employer is always on the upper hand, and a retired employee, in case of unreasonable non-payment of the retiral dues, suffers hard and the interest for such delay would compensate.

27. In another Judgment rendered in the case of **D.D. Tewari (Dead) through Legal Representatives Vs. Uttar Haryana Bijli Vitran Nigam Limited and others**, reported in (2014) 8 SCC 894, it has been held that retiral dues are valuable right of the retired employee, and any culpable delay in settlement or disbursement must visit with penalty of payment of interest.

28. I have also considered the law rendered by the Hon'ble Apex Court in the case of **H.Gangahanume Gowda Vs Karnataka Agro Industries Corpn. Ltd.** reported in (2003) 3 SCC 40, wherein paragraph no. 7, it has been held that as soon as gratuity becomes payable, the employer is under obligation to determine the amount of gratuity and furnish the notice in writing to the person to whom the gratuity is payable.

29. The another issue is that whether the petitioner is entitled for payment of the benefits of the recommendations of Sixth Pay Commission ? The government order dated 26.03.2010 provides that the benefits of recommendation of Seventh Pay Commission shall also be available to the employees of the respondent-corporation.

30. Clause 2 of the government order dated 26-03-2010 is quoted hereinunder:-

"2- (1) उपर्युक्त विषय पर मुझे यह कहने का निदेश हुआ है कि सार्वजनिक उद्यम अनुभाग-1 के शासनादेश संख्या-1105/44-1-2009-77/09, दिनांक 16 अक्टूबर, 2009 में निहित व्यवस्था के कम में सार्वजनिक उद्यम अनुभाग-1 के कार्यालय ज्ञाप दिनांक 06 नवम्बर, 2009 द्वारा गठित अधिकृत समिति की संस्तुतियों पर लिये गये निर्णय के अनुसार उ०प्र० राज्य सेतु निगम लिमिटेड के नियमित एवं पूर्णकालिक कार्मिकों को उपर्युक्त शासनादेश दिनांक 16 अक्टूबर, 2009 के प्रस्तर (2) (क) में निहित प्राविधान के अनुरूप संलग्न तालिका के अनुसार

पुनरीक्षित वेतन संरचना में वेतन बैंड एवं ग्रेड वेतन दिनांक 01 जनवरी, 2006 से परिकल्पित आधार पर आगणित करते हुये उसका वास्तविक लाभ तात्कालिक प्रभाव से अनुमन्य कराये जाने की स्वीकृति इस प्रतिबन्ध के अधीन प्रदान की जाती है कि इससे आने वाले 5 अतिरिक्त व्ययभार को निगम द्वारा अपने स्रोतों से वहन किया जायेगा और इस हेतु कोई शासकीय अनुदान देय न होगा”

31. From bare perusal of the aforesaid provision, it is apparent that the state government consciously took the decision that the benefit of the recommendations of the Sixth Pay Commission will be given with immediate effect, on computing the aforesaid benefit notionally, since 01-01-2006. The govt. order dated 26-03-2010 is not under challenge, in this writ petition and even the petitioner has also failed to demonstrate any order, wherein the order dated 26-03-2010 has ever been quashed by any of the court or authority. The petitioner has been retired on 31-07-2007 and as per the stand of respondent-corporation, the notional benefits have been provided as per the decision taken by the state vide issuing the government order dated 26-03-2010, to the regular and full time employees.

32. It's long settled law that a thing should be done in a manner prescribed and not otherwise, and so far as the issue with respect to payment of recommendations of Sixth Pay Commission is concerned, the government order dated 26-03-2010, which is still intact, prescribes that the benefit of the Sixth Pay Commission shall be provided with immediate effect, meaning thereby i.e. from the date of the issuance of the government order dated 26-03-2010 and it further says that the notional benefits shall also be considered since January,2006. The admitted position is that the benefit of recommendations of the Sixth Pay Commission has notionally been granted to the petitioner and since the petitioner was retired in the year, 2007, therefore, the benefit of the govt. order dated 26.03s.2010 would not be available to the petitioner, in totality.

33. So far as the reliance is placed by the petitioner upon the law rendered by the Hon'ble Apex Court in the case of Balbir Singh Turn(Supra) is concerned, the same would not applicable in the facts and circumstances of the present case, as in the aforesaid matter, which went upto the Hon'ble Apex Court, the executive order was under challenge, by which,

the benefit of the recommendations of the Sixth Pay Commission to the Central Government Employees were declined, whereas the government order dated 26-03-2010 has never been challenged and declared nullity.

34. In view of the above, this court finds no illegality in the order of rejection dated 02-03-2016, to the extent of the denial of the actual benefits of the recommendations of the Sixth Pay Commission to the petitioner, since 01-01-2006.

35. Ergo, the writ petition is **partly allowed**. The order impugned dated 02-03-2016 is hereby quashed to the extent of the decision of the respondent authority for non payment of the interest, on the delayed payment of the gratuity and the leave encashment.

36. The competent authority is directed to make payment of interest on the delayed payment of post terminal dues (gratuity and leave encashment), with interest of 7% per annum, to the petitioner, within period of eight weeks

37. No order as to costs.

**(Shree Prakash Singh,J.)**

**February 24, 2026**

AKS