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**(2009) 04 SHI CK 0071**  
**In the High Court Of Himachal Pradesh**

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| Mrs. Sarbjit Kaur                    | Vs | APPELLANT  |
| State of Himachal Pradesh and Others |    | RESPONDENT |

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**Date of Decision :** 01-04-2009

**Acts Referred:**

CCS (Pension) Rules — Rule 68

**Citation :** (2009) 2 ShimLC 136

**Hon'ble Judges :** Sanjay Karol, J

**Bench :** Single Bench

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## Judgement

Sanjay Karol, J.—The petitioner retired as Centre Head Teacher (JBT) on 3.11.1992. In terms of Annexure A-1 i.e. Certificate and Report-cum- Gratuity Payment Order she was entitled to Rs. 37,125/- as gratuity. The same could not be released as the service book of the petitioner was not available with the respondents.

2. Petitioner filed the present petition before the erstwhile H.P. Administrative Tribunal, which was admitted on 2.12.1996 when the following direction was issued:

ADMIT

The learned Asstt. Advocate General waives notice on behalf of the respondents. Reply within six weeks.

Respondents are directed to deposit the amount of Gratuity which is due and admissible to the applicant in the Registry within the time aforesaid. Question of interest shall be decided at the stage of decision of the application.

3. By virtue of the provision of the Himachal Pradesh Administrative Tribunal (Transfer of decided and pending cases and applications) Act, 2008 (No. 14 of 2008) the matter now stands transferred to this Court.

4. Mr. R.K. Sharma, learned Senior Additional Advocate General has placed on record letters dated 13.1.1997 and 14.1.1997 from which it is evident that the

amount of Rs. 37,125/- was deposited with the Registry of the erstwhile Administrative Tribunal.

5. In the reply the only defence taken by respondents is that the amount could not be released for the reason that the service book of the petitioner was not available.

6. Letter dated 13.8.1993 (Annexure A-3) written by the District Primary Education Officer, Shimla evidences the fact that the petitioner's service book had been sent by him to the Block Primary Education Officer for completing the necessary formalities. The fact that the service book was in the possession of the respondent department and the petitioner had got nothing to do with the same is also evident from various other communications (Annexure A-4 to A-16).

7. It is not the respondents' case that the petitioner had ever faulted in complying with the codal formalities, in accordance with law, at any point of time. Hence, in my considered view petitioner shall also be entitled to interest on the delayed payment of gratuity.

8. CCS (Pension) Rules govern service condition of the petitioner. Rule 68 of the CCS (Pension) Rules provides as under:

68. Interest on delayed payment of gratuity:

(1) If the payment of gratuity has been authorised later than the date when its payment becomes due, and it is clearly established that the delay in payment was attributable to administrative lapses, interest shall be paid at such rate as may be prescribed and in accordance with the instructions issued from time to time:

Provided that the delay in payment was not caused on account of failure on the part of the Government servant to comply with the procedure laid down by the Government for processing his pension papers.

(2) Every case of delayed payment of gratuity shall be considered by the Secretary of the Administrative Ministry or the Department in respect of its employees and the employees of its attached and subordinate offices and where the Secretary of the Ministry or the Department is satisfied that the delay in the payment of gratuity was caused on account of administrative lapse, the Secretary of the Ministry or the Department shall sanction payment of interest.

(3) The Administrative Ministry or the Department shall issue Presidential sanction for the payment of interest after the Secretary has sanctioned the payment of interest under Sub-rule (2).

(4) In all cases where the payment of interest has been sanctioned by the Secretary of the Administrative Ministry or the Department, such Ministry or the Department shall fix the responsibility and take disciplinary action against the Government servant or servants who are found responsible for the delay in the payment of gratuity.

9. Retirement benefits including pension is not a bounty but a right of retired employee. The Government is obliged to initiate process for payment according to the time schedule prescribed in the departmental Rules. The present case is a clear example of inexcusable departmental delay. The delay has resulted into frustration, unavoidable litigation and costs. Payment of interest does not lie in the domain of discretion but it is statutory and therefore mandatory. State of Kerala and Others Vs. M. Padmanabhan Nair, ; H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd., and Dr. Uma Agrawal Vs. State of U.P. and Another,

10. There are Governmental instructions that if the amount of gratuity is delayed beyond three months, petitioner shall be entitled to interest at the rate of 7% per annum up to a period of one year and beyond one year at the rate of 10% per annum. The petitioner shall be entitled to interest on such rates in accordance with law till the date of deposit of the amount of gratuity. The amount of interest shall be paid by the respondents within a period of 12 weeks from today.

11. The Secretary (Education) is directed to have the matter enquired and fix responsibility of the erring officials who were responsible for the non-release of the gratuity amount. The amount of interest shall be recovered, personally from such erring officials. The outcome of the inquiry shall be placed on the file of this Court within a period of six months from today.

It is open for the petitioner to move appropriate application for the release of the amount already deposited.

Petition stands disposed of.