**(2001) 06 GUJ CK 0047**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 6111 of 1990

Rajikant R. Upadhyay APPELLANT

Vs

Gujarat Government and Others RESPONDENT

**Date of Decision :** 14-06-2001

**Acts Referred:**

**Citation :** (2002) 93 FLR 930 : (2001) 3 GLR 2628

**Hon'ble Judges :** Kundan Singh, J

**Bench :** Single Bench

**Advocate :** Mahesh P. Prajapati, for C.H. Shah, for the Appellant; Vidhatri K. Parekh and B.M. Mangukiya, for the Respondent

**Final Decision :** Allowed

## Judgement

Kundan Singh, J.—This petition has been filed for a direction to the respondents to pay the petitioner interest as found just and reasonable from the date of retirement till the actual day of payment by this Court on the amount of pension and gratuity etc., forthwith.

2. The petitioner on reaching the age of 58 years retired from the post of Principal of the respondent No. 3 School on 31-10-1986. As per the Rules and Regulations of the department concerned, the responsibility of preparing, verifying and sending the pension papers of the Assistant Teacher to the District Education Officer concerned lies on the Principal of the School. But in case of the Principal of the School, such responsibility lies on the management of the School. Thus, the respondent No. 3 was required to prepare, verify and send to the District Education Officer, District Sabarkantha at Himmatnagar for further necessary action. But the respondents did not send the pension papers of the petitioner to the aforesaid District Education Officer, District Sabarkantha at Himmatnagar. Hence, the petitioner filed Application No. 324 of 1986 before the Secondary Education Tribunal, Ahmedabad on 16-10-1986 and after hearing the parties concerned the Secretary, Secondary Education Tribunal passed the interim order directing the respondents to send pension papers of the petitioner

within a period of seven days on 3-12-1986. But the respondent No. 3 management of the School with a view to harass the petitioner send the pension papers to the District Education Officer on 22-12-1986 but without signing and verifying the said papers, and hence the District Education Officer was not able to finalize the pension case of the petitioner. Therefore, the Secondary Education Tribunal vide order dated 24-12-1986 directed the President or Secretary of respondent No. 3 management of the School to go to the office of the department within seven days from the date of receipt of the order and sign the relevant entries and verification in service book and also sign pension papers there in D.E.O.''s office, so that the finalisation of the pension, gratuity etc. is not delayed any further. Learned Counsel for the petitioner submitted that the order of the Tribunal was not complied with and hence, the petitioner filed Misc. Civil Application No. 49 of 1987 for initiating the contempt proceeding and as per the directions of this Court, the respondent No. 3 signed the pension papers in this Court on 27-11-1987 and the respondent No. 3 went to the office of the District Education Officer at Himmatnagar to sign the remaining papers on 28-11-1987. Thus, the order of the Tribunal was complied with and after lapse of 23 months the petitioner was given provisional pension.

3. The contention of the learned Counsel for the petitioner is that the respondent No. 3 has delayed deliberately in sending the pension papers to the District Education Officer, Himmatnagar, and hence, penal interest be imposed on the respondents to which the petitioner is entitled as initially the papers were not sent to the District Education Officer, Himmatnagar. Later on, the pension papers of the petitioner were sent but they were not signed by the respondent No. 3 management of the School and hence the petitioner moved the Secondary Education Tribunal, Ahmedabad and the Tribunal directed the management of the respondent No. 3 School to sign the pension papers within a week. Even though the respondent No. 3 had not complied with the order of the Tribunal and the petitioner had moved the contempt proceedings before this Court and the parties appeared and in the Court, the papers were signed and the order of the Tribunal was complied with. Thus, there was deliberate intention on the part of the respondent No. 3 to harass the petitioner by not sending the pension

papers of the petitioner to the department concerned within scheduled time, and hence, the respondents should be directed to finalize the pension case of the petitioners. Thus, the petitioner got the provisional pension on 20-9-1988 i.e., after a lapse of 23 months. It is also stated by the learned Counsel for the petitioner that the petitioner got the amount of his pension and gratuity on 11-5-1989 i.e., after a lapse of 30 months without any fault of the petitioner.

4. Learned Counsel for the petitioner relied on the decision of the Supreme Court in the case of State of Kerala and Ors. v. M. Padmanabhan Nair, reported in 1985 SCC (L & S) 278, wherein it has been held as under :

"The instant case is a glaring instance of such culpable delay in the settlement of pension and gratuity claims due to the respondent who retired on May 19, 1973.

 

His pension and gratuity were ultimately paid to him on August 14, 1975 i.e., more than two years and three months after his retirement and hence after serving lawyer''s notice he filed a suit mainly to recover interest by way of liquidated damages for delayed payment. The appellant put the blame on the respondent for delayed payment on the ground that he had not produced the requisite L.P.C. (Last Pay Certificate) from the Treasury Officer under the Rule 186 of the Treasury Code. But on plain reading of Rule 186, the High Court held and in our view rightly - that a duty was cast on the Treasury Officer to grant to every retiring Government servant the last pay certificate which in this case had been delayed by the concerned officer for which neither any justification nor explanation had been given. The claim for interest, was therefore, rightly, decreed in respondent''s favour."

5. Learned Counsel for the petitioner also relied on the decision of the Supreme Court in the case of Dr. Uma Agrawal Vs. State of U.P. and Another, , wherein it has been held as follows :

"Now-a-days, several writ petitions are being filed in this Court and various High Courts seeking relief for disbursement of redral benefits, because of inordinate delays in payment of these benefits. As Krishna Iyer, J, stated in State of Mysore Vs. C.R. Sheshadri and Others, , ''retired government official is sensitive to delay in drawing monetary benefits. And to avoid posthumous satisfaction of the pecuniary expectation of the superannuation public servant - not unusual in government, it is becoming necessary to issue directions in several cases, for early payment of these dues. In yet another case in State of Kerala and Others Vs. M. Padmanabhan Nair, , this Court has occasion to point out that usually ''the delay occurs by reason of non-production of the L.P.C. (Last Pay Certificate) and the N.L.C. (no liability certificate) from the concerned departments'', but both the documents pertain to matters, records whereof would be with the concerned government departments. It was observed that inasmuch as the date of retirement of every government servant was very much known in advance, it was difficult to appreciate why the process of collecting the requisite information and issuance of the abovesaid two documents should not be completed well before the date of retirement so that the payment of gratuity amount could be made on the date of retirement or on the following day arid the pension, at the expiry of the following month. This Court stated that the necessity for prompt payment of the retirement dues to a government servant immediately after his retirement could not be

overemphasised and it would not be unreasonable to direct that there would not be a liability to pay penal interest on these retirement benefits. In several cases decided by this Court, interest at the rate of 12% per annum has been directed to be paid by the State."

6. On the contrary, learned A.G.P., submitted that the Education Department is not at fault at all as it is the duty of the respondent No. 3-Management of the School to send the pension papers of the petitioner within the scheduled time

 

and it has not been done so by the respondent No. 3. Subsequently, those papers were submitted, but the same were not signed and verified by the respondent No. 3 then those papers were signed in this Court when the contempt proceedings were initiated. As such, the respondents No. 1 and 2 are not responsible for delay in making payment of amount of pension and gratuity etc. to the petitioner.

7. I have carefully considered the contentions of the learned Counsel for the parties and perused the papers on record. It is undisputed fact in this case that the petitioner retired on 31-10-1986 on reaching the superannuation age of 58 years from the post of Principal of the respondent No. 3. Under the relevant Rules and Regulations, the Principal of the School is required to verify and send the pension papers to the concerned department in case of the Assistant Teacher. But in the case of the Principal-petitioner, the respondent No. 3 management of the School was responsible to prepare and send the pension papers of the petitioner to the concerned department.

8. From the facts stated above, it is clear that the provisional pension was granted on 29-9-1988 after lapse of 23 months and his pension and gratuity on 11-5-1989 instead of 1-11-1986 i.e., after a lapse of 30 months without any fault of the petitioner and for that the respondent No. 3 is responsible and there is no fault on the part of the petitioner. In several cases, the Supreme Court has granted interest at the rate of 12% p.a. for the delayed period. Hence, I think it just and proper to award interest @ 12% p.a. from the date of retirement till the date on which the retiral benefits were paid to the petitioner.

9. In view of the above, this petition deserves to be allowed. Accordingly, this petition is allowed and the respondent Nos. 1 and 2 are directed to calculate interest at the rate of 12% p.a. on the retiral benefits from the date of retirement till the actual date of payment of the same to the petitioner and they will deduct the same from the grant of the respondent No. 3-Management of the School to pay the same to the petitioner within a period of three months from the date of production of certified copy of this order. Rule is made absolute to the aforesaid extent, with no order as to costs.

Petition allowed.

 