
(2010) 10 SHI CK 0276
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 4135 of 2008

Smt. Tara Devi

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 10 SHI CK 0276

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—Petitioner's husband late Sh. Lachhman Singh was appointed as Mechanic Grade-II in the respondent No. 2 Department with effect from 26.2.1966. He was confirmed as Mechanic Grade-II on 29.11.1977. In sequel to memorandum issued by the State Government dated 6.12.1977, administrative control of the Agriculture Workshop, Bhangrotu came under the control of respondent No. 3 Corporation. Petitioner was absorbed in respondent No. 3 corporation. He opted for GPF instead of CPF. He died on 5.10.1985. Petitioner made representation for the release of family pension. Respondent No. 2 entered into correspondence with Senior Deputy Accountant General (A&E) on 3.12.1987. However, case of the petitioner was rejected on 17.3.1988. Thereafter respondent No. 1 directed respondent No. 2 to look into the matter on 26.9.1988. Respondent No. 2 also entered into correspondence with respondent No. 3. Petitioner made representations on 5.12.1992, 30.5.1994, 12.7.1994, 6.9.1994, 29.9.1994 and 14.2.1995. The matter was discussed by respondent No. 1 with respondent No. 2 and by respondent No. 2 with respondent No. 3. However, the fact of the matter is that petitioner was not granted any family pension. She made another round of representations on 2.5.1995, 1.6.1995, 25.8.1995, 26.10.1995, 24.11.1995, 9.1.1996, 20.1.1996, 1.3.1996, 27.3.1996 and 21.6.1996. Case of the petitioner was rejected by respondent No. 2 on 1.7.1996. However, she was paid gratuity of Rs. 13,862/- on 21.3.1989.

2. Mr. R.L. Kaith has placed on record copy of P.P.O. dated 6.7.2009 whereby petitioner has now been granted family pension of Rs. 200/- per month.

3. Mr. R.L. Kaith has strenuously argued that respondents have inordinately delayed the release of pensionary benefits to his client, thus, she is entitled to be compensated by way of interest.

4. Mr. P.M. Negi, learned Deputy Advocate General has vehemently argued that petitioner is not entitled to any interest on the delayed payment of family pension.

5. I have heard the learned Counsel for the parties and have perused the pleadings carefully.

6. Petitioner's husband joined as Mechanic Grade-II on 26.2.1966. He died on 5.10.1985. Case of the petitioner was rejected initially on 17.3.1988 and thereafter on 1.7.1996. She has been granted family pension as per P.P.O. order dated 6.7.2009. The Court is of the considered opinion that the respondents themselves are responsible for delaying the release of family pension and she is entitled to interest on the delayed payment of family pension.

7. Their Lordships of the Hon''ble Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), have held that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex-gratia payment. It is a payment for the past service rendered. It is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. The most practical *raison d'etre* for pension is the inability to provide for oneself due to old age. Their Lordships have held as under:

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors. (1) wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any

such order but by virtue of the rules. This view was reaffirmed in *State of Punjab and Anr. v. Iqbal Singh* (1).

21. There are various kinds of pensions and there are equally various methods of funding pension programmes. The present enquiry is limited to non-contributory superannuation or retirement pension paid by Government to its erstwhile employee and the purpose and object underlying it. Initially this class of pension appears to have been introduced as a reward for loyal service. Probably the alien rulers who recruited employees in lower echelons of service from the colony and exported higher level employees from the seat of Empire, wanted to ensure in the case of former continued loyalty till death to the alien rulers and in the case of latter, an assured decent living standard in old age ensuring economic security at the cost of the colony.

22. In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability, State obligation to provide security in old age, an escape from undeserved want was recognised and as a first step pension was treated not only as a reward for past service but with a view to helping the employee to avoid destitution in old age. The quid pro quo, was that when the employee was physically and mentally alert he rendered unto master the best, expecting him to look after him in the fall of life. A retirement system therefore exists solely for the purpose of providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal retirement receives the same amount. (see *Retirement Systems for Public Employees* by Bleakney, page 33.)

8. Their Lordships of the Hon'ble Supreme Court in *Poonamal and Others Vs. Union of India and Others*, have held that pension is not merely a statutory right but it is the fulfillment of a constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment, old-age, disablement or similar other cases of undeserved want. Where the Government servant rendered service, to compensate which a family pension scheme is devised, the widow and the dependent minors would equally be entitled to family pension as a matter of right. Their Lordships have held as under:

7. It is not necessary to examine the concept of pension. As already held by this Court in numerous judgments that pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right. *Deoki Nandan Prasad v. State of Bihar and Ors.* (1), *State of Punjab and Anr. v. Iqbal Singh* (2) and *D.S. Vakara and Ors. v. Union of India*. Where the Government Servant rendered service, to compensate which a family pension scheme is devised, the widow and the dependent minors would equally be entitled to family pension as a matter of right. In fact we look upon pension not merely as a statutory right but as the fulfilment of a constitutional promise in as much as it partakes the character of public assistance in cases of unemployment, old-age, disablement or similar

other cases of underserved want. Relevant rules merely make effective the constitutional mandate. That is how pension has been looked upon in D.S. Nakara's Judgment. At the hearing of group of matters we pointed out that since the family pension scheme has become non-contributory effective from September 22, 1977 any attempt at denying its benefit to widows and dependents of Government servants who had not taken of the 1964 liberalisation scheme by making or agreeing to make necessary contribution would be denial of equality to persons similarly situated and hence violative of Article 14. If widows and dependents of deceased Government servants since after September 22, 1977 would be entitled to benefits of family pension without the obligation of making contribution, those widows who were denied the benefits on the ground that the Government servants having not agreed to make the contribution, could not be differently treated because that would be introducing an invidious classification: among those who would be entitled to similar treatment. When this glaring dissimilar treatment emerged in the course of hearing in the Court, Mr. B. Dutta learned Counsel appearing for the Union of India requested for a short adjournment to take further instructions.

9. Their Lordships of the Hon"ble Supreme Court in All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, have held that pension is a deferred portion of compensation for past service.

10. Their Lordships of Hon"ble Supreme Court in R.R. Bhanot Vs. Union of India and others, have granted interest of 12% when there was delay in payment of pensionary benefits.

11. Their Lordships of the Hon"ble Supreme Court in R.P. Kapur Vs. Union of India and Others, have again awarded interest @ 12% on account of the long delay and denial of pension and retiral benefits on a wrong interpretation of the rules. Their Lordships have held as under:

32. The pension and family pension shall, therefore, be re-computed on the above basis and paid to the appellant w.e.f. 25.11.1992. The other retiral benefits will also be re-fixed on the above basis w.e.f. 25.11.1992 and paid to him. The computation of the family pension shall also be done on that basis. On account of the long delay and denial of pension and retiral benefits on a wrong interpretation of the Rules, we deem it fit to award 12% interest on all the arrears payable to him on the above basis in respect of pension and all benefits. Arrears have to be computed with effect from the date of retirement on 25.11.1992. The appeal is allowed as stated above but there will be no order as to costs.

12. Their Lordships of the Hon"ble Supreme Court in AIR 2000 SC 3513a have held that it is expected that all retirement benefits should be paid on the day of retirement or soon thereafter if for some unforeseen circumstances the payment cannot be made on retirement day itself. Their Lordships have granted 18% interest on delayed payment of GPF, GIS, leave encashment, arrears of pay etc.

Their Lordships held as under:

4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement i.e. 31.8.1997 till the date of payments.

13. The Division Bench of this Court in Kamlesh Saxena and Ors. v. State of Himachal Pradesh and Ors. ILR 1985 H.P. 605 has granted interest @ 12% by making the following pertinent observations with regard to delayed payment of DCRG and pensionary benefits. The Division Bench has held as under:

20. The ultimate question which survives for consideration is whether the petitioners are entitled to any interest on account of the delayed payment of the DCRG amount. In State of Kerala and Others Vs. M. Padmanabhan Nair, the law on the subject has been declared in no uncertain terms by the highest Court. The pertinent observations made in that case are reproduced here-in-below:

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.

...The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasized and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

These observations laying emphasis on the prompt payment of the retirement dues to a retiring Government servant on the pain of penalty of payment of interest at the current market rate must apply with still greater force to the payment of the pensionary benefits to the family of a Government servant dying while in service since, in the latter case, the family is, more often than not, left without any means to support itself on the death of the bread-winner and, in such circumstances, any undue or unjustified delay in the payment of the pensionary benefits to the beneficiaries cannot but be regarded as culpable. The claim for interest at the rate of 12 per cent per annum advanced by the petitioners on account of the delayed payment of the DCRG amount to them must be decided against the aforesaid backdrop as well as in light of the obligation cast under the Pension Rules on the Head of Office to determine and authorize the payment of the amount of DCRG, or a portion thereof, as the case may be, to the family of the deceased Government servant, within the time-limit laid down in the relevant rules.

21. Rule 77 of the Pension Rules enjoins a duty upon the Head of Office, who has

received an intimation about the death of a Government servant while in service to ascertain, inter alia, whether the DCRG is payable in respect of the deceased government servant and, if so, to address the person concerned for making a claim in the prescribed form. Under Rule 78, while taking action to obtain such claim from the family of the deceased, it is the duty of the Head of Office to simultaneously undertake the completion of Form 18 (Form for assessing and authorizing the payment of family pension and death-cum-retirement gratuity when a Government servant dies while in service). This work is required to be completed within one month of the date on which intimation regarding the date of death of the Government servant has been received. The process of determination of qualifying service and qualifying emoluments is also required to be completed by the Head of Office within one month of the receipt of such intimation and the amount of DCRG is to be calculated accordingly. Similarly, under Rule 80-C (2), within the same time limit of one month, the Head of Office must take steps to ascertain if any Government dues excluding the dues pertaining to the allotment of Government accommodation, were recoverable from the deceased Government servant. Rule 80 provides that on the receipt of the claim, the Head of Office shall complete the prescribed Form 18 and send the said Form in original to the Accounts Officer with other relevant documents not later than one month of such receipt. While forwarding the said Form, the Head of Office is required to draw the attention of the Accounts Officer: (a) to the details of the ascertained Government dues outstanding against the deceased Government servant, which are recoverable out of the DCRG amount and (b) to the amount of gratuity to be held over partly for adjustment of Government dues which have not been assessed and partly as a margin for adjustment in the light of the final determination of the gratuity. The maximum amount of gratuity to be held over for the purpose stated in (b) above must be limited to ten per cent of the amount of gratuity or rupees one thousand, whichever is less. Under Rule 80-A after the documents referred to in Rule 80 have been sent to the Accounts Officer, the Head of Office is under an obligation, inter alia, to draw hundred per cent of the gratuity duly determined. For the said purpose, the Head of Office must issue a sanction letter in favour of the claimant(s) indicating: (a) the amount of the hundred per cent of the gratuity duly determined and (b) the amount(s) recoverable out of the gratuity under Rule 80. After the issue of the sanction letter, the Head of Office is duty bound to draw the amount of hundred per cent gratuity worked out after deducting therefrom the above-mentioned recoverable sums and to disburse such amount immediately after the same has been drawn accordingly. Under Rule 80-B, the Accounts Officer is under a duty to check and complete Form 18, within a period of three months from the date of receipt of the documents referred to in Rule 80 and inter alia, to assess and to determine the amount of the balance of the gratuity after adjusting the amount, if any, outstanding against the deceased Government servant and to intimate to the Head of Office the amount so determined with the remark that said amount be drawn and disbursed by him to the person or persons to whom the provisional gratuity has been paid. If the amount of gratuity disbursed by the Head of Office

proves to be larger than the amount finally assessed by the Accounts Officer the beneficiary is not to be required to refund the excess. Rule 79 lays down the steps which are required to be taken in case the service records are incomplete and, accordingly, in so far as it is relevant for the present purposes, if the deceased Government servant had rendered more than twenty four years of qualifying service, and the entire service is not capable of being verified and accepted but the service for the last five years has been verified and accepted, the family of the deceased Government servant has to be allowed, on provisional basis, the DCRG equal to 12 times of the emoluments and the final amount must be determined by the Head of Office on the acceptance and verification of the entire spell of service which shall be done by the Head of Office within a period of six months from the date on which the authority for the payment of provisional gratuity was issued. The balance, if any, becoming payable as a result of the determination of the final amount of DCRG has then to be authorized to be paid to the beneficiaries.

22. The above time-bound procedure has been laid down in order to facilitate the expeditious issue of the authority for the payment of family pension and death-cum-retirement gratuity so that the family of the deceased Government servant is not put to hardship. The Head of Office has to ensure that action to obtain the claim or claims from the beneficiaries, completion of Form 18 and assessment of Government dues is initiated simultaneously. Special efforts have to be made to get the claims in the respective Forms from the family of the deceased Government servant as early as possible. Where the family is residing in the place of duty of Head of Office, the Forms and documents which are required to be completed by the family may, if possible, be obtained personally and for this purpose the services of the Welfare Officer could be utilized. If the family is residing outside the place of the duty of the Head of Office all the Forms and other documents which are required to be sent to the family should be forwarded with clear instructions so that unnecessary correspondence is avoided (vide Government of India Ministry of Finance O.M. No. F.11 (9) E.V(A)/77, dated the 15th February, 1979).

14. The Division Bench of this Court in Ghelo Ram v. H.P. State Electricity Board and Ors. ILR 1996 H.P. 303 has held that culpable delay in the settlement and disbursement of pensionary benefits must be visited with penalty of payment of interest at the current market rate. The Division Bench has held as under:

7. One more direction requires to be given and that pertains to the payment of interest. There is no doubt that there has been a culpable delay in the finalization of the claim for terminal gratuity in respect of the petitioner and respondents No. 12, 19, 26 and 29. The following table gives the relevant particulars having a bearing on this aspect:-

Sr.	Name of petition/respondent	Date of retirement	Date of authorization of payment of terminal gratuity
1.	Ghelo Ram petitioner	28.2.1979	21.12.1981
2.	Kartar Singh respondent	31.7.1982	24.1.1986
No. 12	Rasila Ram respondent		

30.4.1982 8.1.1986 No. 19 4. Marchu Ram respondent 28.2.1985 13.1.1986 No. 26 5. Sohan Singh respondent 31.3.1981 24.1.1986 No. 29

No reasons are discernible from the material on record to justify such an inordinate delay in the authorization of the payment of terminal gratuity to these persons. In *State of Kerala and Others Vs. M. Padmanabhan Nair*, and in several decisions rendered by this Court it has been held that any culpable delay in the settlement and disbursement of pensionary benefits must be visited with the penalty of payment of interest at the current market rate. Under the circumstances, the respondent-Board is directed to pay to the petitioner and respondents No. 12, 19, 26 and 29, interest at the rate of 12 per cent per annum on the amount of terminal gratuity from the expiry of the period of two months from the respective dates of retirement of each employee till the date of actual payment to each of them. There is no material on record to show as to whether there was similar delay in the payment of terminal gratuity to the other respondents. If so, they too shall be entitled to interest at the same rate and for the same period. The additional sum becoming due and payable on this account will be paid to the concerned employees within a period of eight weeks from the date of delivery of a certified copy of this order.

15. In the instant case also there is an inordinate delay on the part of the respondents for settling the claim of the petitioner. She had been corresponding with respondents since 1985 till 21.6.1996. Case of the petitioner has been rejected arbitrarily on 17.3.1988 and 1.7.1996. The action of the respondents to reject the case of petitioner for release of family pension was wholly arbitrary, thus, violative of Articles 14 and 16 of the Constitution of India. Petitioner, in these circumstances, must be compensated for the callous attitude of the respondents by initially not releasing the family pension and when the same was released it has been paid without interest.

16. Accordingly, in view of the observations made hereinabove and the authoritative and definitive law laid down by their Lordships of the Hon'ble Supreme Court and by this Court, the petition is disposed of with the directions to the respondents to pay interest @ 9% per annum to the petitioner on delayed family pension. The same shall be paid and disbursed to the petitioner within three months after the production of certified copy of this judgment by the petitioner. No costs.