



**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

**CWP No. 2258 of 2022  
Reserved on 21.08.2023  
Decided on: 29.08.2023.**

Dr. Vinay Patyal

..Petitioner

**Versus**

State of Himachal Pradesh and others

...Respondents

**Coram**

**The Hon'ble Mr. Justice Satyen Vaidya, Judge**

<sup>1</sup> *Whether approved for reporting? Yes*

For the petitioner : Mr. Ashish Verma, Advocate.

For the respondents : Mr. Pushpender Jaswal, Additional Advocate General with Mr. Rahul Thakur, Mr. Gautam Sood and Ms. Priyanka Chauhan, Deputy Advocate Generals, for respondents No. 1 to 3.

Mr. Somesh Sharma, Advocate, vice Mr. Karun Negi, Advocate, for respondent No.4.

Mr. Harish Kumar, JOA (IT), Regional Hospital, Solan, present in person.

**Satyen Vaidya, Judge**

By way of instant petition, petitioner has prayed for the following substantive reliefs:

- (i) *That the respondents may kindly be directed to grant pension to the petitioner having served with the respondent Department.*
- (ii) *That the respondents may kindly be directed to grant GPF, Gratuity, Leave Encashment, Group*

<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment?*

*Insurance, Pension Arrears from 24.08.2021 to till its payment and commutation amount as revisable from time to time alongwith interest @ 9% per annum and is also entitled for compensation at the rate of Rs.100 per day, payable by the official who delayed such file and apart from this compensation, petitioner is also entitled to interest at the rate of 6% per annum, compoundable monthly, from the 1<sup>st</sup> day of the fourth month of retirement until the money is credited in the account of the petitioner.*

*(iii) That the respondent Department may kindly be directed to extend the benefits of the judgments passed by the Hon'ble High Court in Nek Ram vs. State of H.P. & Ors., CWP No. 3050 of 2014, decided on 17.07.2014 and Ranjeet Singh's case CWP No. 423/2020 decided on 22.01.2020 annexed as Annexure P-5 and Annexure P-6 to the petitioner forthwith all consequential benefits.*

2. The petitioner has pre-maturely retired on 24.08.2021 as Medical Officer, Regional Hospital, Solan, District Solan, H.P. On his retirement, petitioner became entitled to pension as per the CCS (Pension) Rules, 1972, gratuity, leave encashment, GPF and benefits of Group Insurance. The petitioner preferred the instant petition on 8.4.2022 with a grievance that despite lapse of about eight months from the date of his retirement, his retiral benefits

viz. pension, gratuity, leave encashment and group insurance etc. were not disbursed.

3. Respondents No. 1 to 3 filed their reply on 11.5.2022 and submitted that the pension case of the petitioner had been submitted to the office of the Accountant General, Himachal Pradesh (respondent No.4) by the Medical Superintendent, Regional Hospital, Solan on 02.05.2022. The time taken in submission of the pension case of petitioner w.e.f. 24.8.2021 till 02.05.2022 was sought to be justified on the grounds that the entries in the service book of petitioner were not complete for the periods 01.07.1998 to 21.09.1998, 01.01.2005 to 31.07.2005 and 26.09.2016 to 06.01.2017, when the petitioner was posted in District Chamba. The service book of petitioner had been sent to the Chief Medical Officer, Chamba and the Principal, Pandit JLN GMC, Chamba by the Medical Superintendent, Regional Hospital, Solan. It has also been stated that in the first instance the pension case of the petitioner was submitted on the basis of pre-revised scales and his pension case on the basis of revised scales would be again submitted in due course.

4. Respondent No.4 also submitted its reply on 23.6.2022. It has been submitted that the case of petitioner for pension was received in the office of respondent No.4 vide letter dated 02.05.2022 and the pensionary benefits of petitioner on pre-revised scale were authorised by the said respondent on 20.05.2022. It has also been stated that the amount of GPF to the tune of Rs.11,95,536/- had already been authorised by respondent No. 4 on 07.12.2021.

5. During the pendency of the petition, the Medical Superintendent, Regional Hospital, Solan vide instructions dated 19.8.2023, endorsed to the office of the learned Advocate General has provided the data in respect of the disbursement of retiral benefits to the petitioner in a tabulated form as under:

Sr No	Particulars	Sanction No. & date of the AG, HP	Sanction/further sanction No. & date by MS, RH, Solan	Amount Paid in Rs.	Bill Number & date
1	GPF	Fund:07/Final withdrawal /Authority letter/10-12690/2021-22/20666-68 dated 8/12/2021	14/12/2021	11,95,536/-	100273 14/12/2021
2.	Retirement Gratuity (Pre-revised scale)	PEN 5/6/P/22/10/60238810 Dated 20/05/2023	HFW-RH-SLN-B(3)/18-3592-95 dated 24/05/2023	10,00,000/-	100046 dated 26/05/2022
3.	Pension (pre-revised)	PEN5/2062218549/6/P/22/10/60238810 dated 20/05/2022	Paid by the DTO Solan	@ 34,713/-	-
4.	Commutation (pre-revised)	PEN5/6/P/22/10/	Paid by the DTO Solan	14,07,273/-	--

		60238810 Dated 20/05/2023			
5.	Leave Encashment (pre-revised)	-----	HFW-RH-SLN-B(3)/18-5359-62 dated 20/09/2022	11,25,355/-	1001182 24/09/ 2022
6.	Salary for the period w.e.f. 26/09/2016 to 25/12/2016 (after settle the leave case)	---	HFW-RH-SLN-B(3)/18-5518 dated 20/10/2022	4,00,843/-	100241, 16/11/ 2022
7.	Revised Salary Arrear	--	--	50,000/-	100281 13/12/ 2022
8.	Leave encashment (in revised scale)	--	HFW-RH-SLN-B(3)/18-935-38 dated 22/6/2023	4,81,074/-	100091 22/06/ 2023
9.	Retirement Gratuity (in revised scale)	PEN5/2062218549/6/P 23/15/60282964 dated 05/07/2023	HFW-RH-SLN-B(3)/18-1033-35 dated 11/07/2023	2,00,000/-	100117 11/07/ 2023
10	Group Insurance Scheme	--	HFW-RH-SLN(Acctts)/GIS/2019/-1198-1200 dated 08/08/2023	Rs.1,39,69/-	10141 dated 08/08/ 2023
11	Arrear of revised Pension	--	Paid by the DTO Solan	Rs. 5,79,377/-	100970 dated 02/08/ 2023
12.	Pension in revised scale	Revised pension amounting to Rs.97,968/- P.M. authorized to the petitioner from the month of July ,2023			
13.	Commutation (in revised Scale)	Revised Commutation will be paid in due course of time as per Para No. 10 of the HP Govt. Finance Department O.M. NO. Fin(Pen)A(3)-1/2021-Part-I dated 25/02/2022.			

6. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

7. The issue that arises for consideration in the instant petition relates to the delay in disbursement of retiral benefits of a Government servant.

8. Noticeably, the petitioner had served the State Government for a period of 28 years and 9 months. He had rendered the requisite qualifying service to be entitled for pension under CCS (Pension) Rules. In addition, he was also entitled to all other retiral benefits due and admissible to him in accordance with rules. The above tabulated information provided by the Medical Superintendent, Regional Hospital, Solan shows the latest position with respect to disbursement of retirement dues to the petitioner till 19.08.2023. The picture that emerges is quite dismal and painful. Two years have elapsed since the retirement of the petitioner; he has not been disbursed his entire dues till date. A substantial amount still remains to be paid to him. The State Government has not yet been sure about the timeline within which it will be able to discharge the liability.

9. In ***Dr. A. Selvaraj vs. CBM College and others, Civil Appeal No. 1698 of 2022***, decided on 04.03.2022, by the Hon'ble Court, it has been observed as under:

*“4. Having heard learned counsel for the respective parties, we are of the opinion that as there was a delay in making the payment of retirement benefits and settling the dues for which the appellant employee is not at all responsible, he is entitled to the interest on the delayed payment. Even the Division Bench of the High Court has also observed in the impugned judgment and order that the appellant is entitled to the interest on the delayed payment. However, there is an inter se dispute between the Secretary, Management and the Government as to who is responsible for the delay in making the payment to the appellant and therefore, he has been denied the interest on delayed payment though entitled to. It is to be noted that as such pursuant to the interim order dated 09.08.2021, the Government did conduct an enquiry and fastened the liability on the college and observed that the former Secretary, Shri C.M. Ramaraj was responsible for the delay in disbursal of the terminal benefits to the original writ petitioner. In that view of the matter, subject to the further final order that may be passed by the Government, the College/Management is first liable to pay the interest on the delayed payment of retirement dues subject to the final decision, which may be taken by the Government, after hearing the Management and the former Secretary. However, because of the inter se dispute between the Management, Secretary and the Government on who is responsible for the delay in making the payment and/or settling the dues, the retired employee should not be made to suffer for no fault of his.*

*5. In view of the above discussion and for the reasons stated above, present Appeal Succeeds. The impugned judgment and order passed by the Division Bench of the High Court*

and that of the learned Single Judge denying the interest on delayed payment of retirement benefits to the appellant is hereby quashed and set aside. The Management / Trustees / College are hereby directed to pay the interest on the delayed payment of retirement benefits to the Appellant, from the date of retirement till the actual payment was made, subject to the final decision that may be taken by the Government on the objections to the enquiry report that may be filed by the former Secretary and/or the College and it will be open for the College / Management / Trustees to recover the same from the person, who, ultimately is held to be responsible for the delay. The payment of interest on delayed payment of retirement benefits to be paid strictly within a period of six weeks from today. In the meantime, the Government to pass a final order on the enquiry report after giving an opportunity to the College / Management / former Secretary. It goes without saying that it would be open to the aggrieved party to challenge the said decision before the appropriate forum.”

10. In **CWP No. 3050 of 2014**, titled as **Nek Ram vs. State of Himachal Pradesh and Others**, decided by Hon'ble Division Bench of this Court on 17.07.2014, it was observed as under:

“3. According to the reply filed by the corporation, the amount sanctioned in favour of the petitioner could not be released due to financial crunch. The respondent Corporation has already taken up the matter with the State Government for the sanction of Rs.3100 lac to

*defray the liability of gratuity and leave encashment vide letter dated 8.5.2014.*

*4. The respondent-Corporation is State within the meaning of Article 12 of the Constitution of India. The petitioner is entitled to get his pensionary/retiral benefits in accordance with law within a reasonable period. The pension has already been sanctioned in favour of the petitioner, however, the same is not being paid to him regularly. The petitioner is getting a meagre pension of Rs.7512/- per month. He has to feed his family from this meagre pension. It would be difficult for him to make both ends meet if this meagre pension is not released to the petitioner regularly. It may be true that there are financial crisis in the corporation. The Corporation is a commercial venture. It is for the respondent-Corporation to raise funds by running the corporation efficiently. Right to pension/retiral benefits including gratuity and leave encashment is a property within the meaning of Article 300A of the Constitution of India. The petitioner cannot be deprived of the same.”*

11. Reverting to the facts of the case, it was on 16.09.2021 that the Director, Health Services had directed the Medical Superintendent, Regional Hospital, Solan to clear the retirement dues of petitioner. The Medical Superintendent, Regional Hospital, Solan forwarded his case to the Accountant General, Himachal Pradesh on 02.05.2022. The office of the Accountant General, Himachal

Pradesh sanctioned the case of petitioner on 20.05.2022. Evidently, this entire process had taken about six months to be completed by the Medical Superintendent, Regional Hospital, Solan, still, the case of the petitioner was forwarded to the office of the Accountant General, Himachal Pradesh on the basis of pre-revised scales. The Himachal Pradesh Civil Services (Revised Pay) Rules, 2022 had been notified on 03.01.2022. The pay of petitioner was thereafter revised by the Medical Superintendent, Regional Hospital, Solan on 01.06.2022. The pension case of petitioner on revised scales was submitted to the office of the Accountant General, Himachal Pradesh on 20.06.2022, the office of the Accountant General, Himachal Pradesh authorised the payments in favour of the petitioner on revised scales on 06.07.2023. As noticed above, a substantial amount is still due to be paid to the petitioner by the respondents.

12. The facts suggest that respondents No. 1 to 3 have no justifiable reason to delay the payment of due and admissible amount to the petitioner. In this view of the matter, respondents No.1 to 3 are held liable to pay to the petitioner interest at the rate of 6% per annum with effect

from the expiry of three months period after the date of his retirement till the date of disbursal of the amounts already paid to the petitioner and further on the amounts still due to the petitioner till the date of its realization. The period of three months considered above for exempting respondents No. 1 to 3 from making the payment of interest has been taken to be a period reasonable for the public authority to discharge its function in clearing the pensionary dues of the government servant.

13. Another question that germinates from the above situation is that the instant case does not appear to be a solitary instance. Repeatedly, the instances of delay in disbursal of retirement benefits are being noticed as having been brought before the Courts. The public authority, responsible for discharge of duties with promptitude, after having failed to do so, should not go scot-free, without being made accountable for its lapses. They hold the public funds in 'trust'. The public money cannot be allowed to be wasted by unjustified delays caused by the public authority(ies) in discharge of their duties. In such manner a substantial

amount of public money goes waste, which otherwise can be used for the implementation of beneficial public scheme(s).

14. In result, the petition is allowed. Respondents are directed to pay to the petitioner interest at the rate of 6% per annum with effect from the expiry of three months period after the date of his retirement till the date of disbursal of the amounts already paid to the petitioner and further on the amounts still due to the petitioner till the date of its actual realization. The respondents are also directed to pay the balance of retirement dues alongwith amount of interest as held above to the petitioner within six weeks from the date of this judgment.

15. This Court while upholding the right of the petitioner to get monetary compensation by way of interest is also conscious and aware that the public funds are not to be used for improvident expenditure. In this view of the matter, a direction is issued to respondent No.1 i.e. the Principal Secretary (Health) to the Government of Himachal Pradesh to get conducted an independent and impartial inquiry into reasons for delay in clearing the pension case of the petitioner and to recover the amount of interest payable to the

petitioner in terms of this judgment from the Public Officer(s)/ Official(s) found responsible, if any, for the lapse.

16. The petition stands disposed of in the aforesaid terms, so also the pending miscellaneous application(s), if any.

**(Satyen Vaidya)**  
**Judge**

**29<sup>th</sup> August, 2023**  
*(GR)*

High Court of J&K