

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC(OA) No.1553 of 2017

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Sovakar Guru *Petitioner*
-versus-
State of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case through Hybrid Mode:
For Petitioners : *Mr. P. Mohapatra, Adv.*

-versus-
For Opp. Parties : *Mr. Sonak Mishra, SC*
(for S & ME Deptt.)

CORAM:
MR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-18.05.2022
DATE OF JUDGMENT:-27.05.2022

S.K. Panigrahi, J.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the Petitioner and learned counsel for the State.
3. The grievance of the Petitioner, insofar as payment of arrears is concerned, has already been redressed but the interest component of the amount which has been held up for the last twenty-one years, is required to be paid.

4. Learned Counsel for the Petitioner submitted that the Petitioner joined service as the Headmaster in Panchayat High School, Chandanbhati, in the district of Bolangir which was a non-Government aided educational institution. However, the school was taken over by the Government with effect from 07.06.1994 and, therefore, the Petitioner was rendering his services as a Government servant till his superannuation on 28.02.2001.

5. Further, the learned counsel for the Petitioner also submitted that the Petitioner, being a 74-year-old man, was made to run from pillar to post to get his legitimate dues but owing to administrative latches, the same couldn't materialize. Therefore, the redressal of grievance of the Petitioner would remain incomplete if he were to be denied of the interest component that is payable to him as a result of delay.

6. Having heard learned counsel for the respective parties, the court is of the opinion that as there was a delay in the payment of arrears of salary for which the Petitioner is not at all responsible, he is entitled to the interest on the delayed payment. Because of the administrative latches, there was a delay in the payment of arrears of salary and/or settling the dues and hence, the retired employee should not be made to suffer for no fault of his.

7. It is well-settled that salaries and pensions are due as a matter of right to employees, and, as the case maybe, to former employees who have served the State. Since, the petitioner rendered his services till superannuation as a government servant, his entitlement to the payment of salary is intrinsic to the right to life under Article 21 and to right to property which is recognized by Article 300A of the Constitution.

8. The Hon'ble Supreme Court in the case of **State of Andhra Pradesh & Anr v. Smt. Dinavahi Lakshmi Kameswari**¹, observed that:

“The direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. Likewise, it is well settled that the payment of pension is for years of past service rendered by the pensioners to the State. Pensions are hence a matter of a rightful entitlement recognised by the applicable rules and regulations which govern the service of the employees of the State.”

9. There is no dispute about the delayed payment as it was withheld for insufficient reasons. There is no material justification to take such time for fixing arrears of the petitioner. On this undisputed position,

¹CIVIL APPEAL NO. 399 OF 2021

the court is not inclined to accept the submissions of the Opposite Party regarding non-payment of interest without any specific provisions in the service conditions. The late decision taken by the opposite party is attributable to administrative latches across different levels and the same cannot be the reason to withheld the payment to the employees who admittedly worked at the relevant time. The fact remains that there was delay in making payment of arrears of salary and other benefits with or without intention, is immaterial. In view of the admitted position on record that the payment was not made on due dates according to service conditions, there is no disputed question of facts involved.

10. Moreover, the employees cannot be allowed to suffer because of inaction on the part of the employer for no fault of the employees. The employee is definitely entitled to get the payment as per the service conditions on due dates and/or in a given case within reasonable time. The employees, had the payment received within time and/or on due dates, could have utilised the same for various purposes.

11. Highlighting the need for consideration on grounds of equity in cases of deferred payments, the Hon'ble Supreme Court, in the case of ***Union of India & Ors v. Dr. J.K Goel***², observed that:

²1995 SCC Supl. (3) 161 1995 SCALE (3)550

“Before any interest can be granted on equitable considerations, it is necessary that the facts of the case should be examined to ascertain whether there are any special equities which would justify the grant of such interest although there is no provision in law for such grant.”

12. Similarly, in the case of **D.D. Tewari vs. Uttar Haryana Bulivitrans Nigam Limited and others**³, the Hon’ble Supreme Court held that:

“.....denial of interest from the date of entitlement till the date of actual disbursement would take away the valuable rights of the retired government servant. It was reiterated in that decision that pension and gratuity are not bounty to be distributed by Government to its employees on their retirement, but are valuable rights and property in its hands and any culpable delay in settlement and disbursement thereof is to be visited with penalty of payment of interest.”

13. In **S.K. Dua v. State of Haryana**⁴, the appellant therein was served with three charge sheets/show cause notices in June 1998, few days before his retirement. However, he retired on 30.06.1998 on reaching the age of superannuation. He was paid provisional pension, but other retiral benefits were not given to him, which included commuted value of pension, leave encashment, gratuity, etc. They were withheld till the finalisation of the disciplinary

³CIVIL APPEAL NO. 7113 OF 2014

⁴CIVIL APPEAL NO.184 OF 2008

proceedings. While answering the issue as to whether the appellant therein was entitled to interest on delayed payment of retiral benefits, in the absence of any statutory rules/administrative instructions or guidelines, the Supreme Court held as follows:

"In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in the absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

14. Applying the ratio laid down by the Hon'ble Supreme Court in the above cases to the facts of this case, there is a delay of about 21 years in settling the salary arrears payable to the petitioner. It is contended by the petitioner that even after multiple representations to the opposite party, his claim was

not entertained, owing to the callous attitude of the opposite party. Therefore, this Court is of the view that the delay on the part of the opposite party in settling the arrears of salary payable to the petitioner for about 21 years purportedly due to administrative latches cannot be accepted.

15. The present case is a clear example of inexcusable departmental delay. Even if it is assumed that the representations made by the petitioner were actively catered to, this cannot be an excuse for lethargy of the department because rules/instructions provide for initiation of process much before retirement. The exercise which was to be completed much before retirement was in fact started long after petitioner's retirement. It is imperative that an interest @ 6% per annum is to be made bearing in mind the decision of the Hon'ble Supreme Court in the case of ***State of Andhra Pradesh & Anr v. Smt. Dinavahi Lakshmi Kameswari***⁵.

16. Accordingly, insofar as the interest rate is concerned, this Court is of the view that the relief sought at the rate of 18% per annum be suitably scaled down. This Court, accordingly, directs the State to pay simple interest computed at the rate of 6% per annum on account of deferred salaries within a period of 30 days from today.

⁵Dinavahi, supra

17. Having considered the matter in aforesaid perspective and guided by the precedents cited hereinabove, this Court allows the petition.

18. The Writ Petition is, accordingly, disposed of in terms of the above directions. There shall be no order as to costs.

(S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 27th of May, 2022/B. Jhankar*

