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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

**BEFORE
HON'BLE SHRI JUSTICE ANAND PATHAK**

ON THE 17th OF MARCH, 2023

WRIT PETITION No. 8528 of 2016

BETWEEN:-

**DR. SHRIKANT KAUSHIK, S/O SHRI G.L. KAUSHIK,
AGED 62 YEARS, OCCUPATION: PENSIONER (RETIRED
AYURVEDIC MEDICAL OFFICER, GANDHI AYURVEDIC
MEDICAL OFFICER, MORENA) R/O 120-GANDHI
COLONY, MORENA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI VIVEK JAIN - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
THE PRINCIPAL SECRETARY, AYUSH
DEPARTMENT, VALLABH BHAWAN BHOPAL
(MADHYA PRADESH)**
- 2. THE DISTRICT AYUSH OFFICER, DISTRICT
MORENA (MADHYA PRADESH)**
- 3. DISTRICT PENSION OFFICER, DISTRICT MORENA
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI JITESH SHARMA - GOVERNMENT ADVOCATE)

.....
*This petition coming on for admission this day, the court passed the
following:*

ORDER

With consent, heard finally.

The petitioner, under Article 226 of the Constitution of India, has preferred this petition seeking the following reliefs:

(i) The respondents may be directed to pay interest @ 12 % p.a. on the

amount of gratuity Rs.10.00 lacs for the period 31.12.2014 (date of retirement) till 23.4.2016 (date of payment).

(ii) Any other relief which this Hon'ble Court may deem fit in the circumstances of the case including costs may also be granted.

2. Precisely stated facts of the case are that petitioner retired from the post of Ayurvedic Medical Officer on 31.12.2014 from Government Gandhi Ayurvedic Hospital, Morena. When petitioner was likely to retire, District Ayush Officer, district Morena (respondent no.2 herein) assessed the recovery of Rs.18,807/- and interest amounting to Rs.1.87 lacs on excess payment made in the year 1987 on the pretext of wrongful grant of advance increments.

3. Petitioner challenged the said recovery by way of Writ Petition No.5903/2014 and vide order dated 30.9.2014 (Annexure P/2) recovery was stayed. It appears that the said writ petition was finally decided in Lok Adalat vide order dated 12.12.2015 whereby Government Advocate conceded to the extent whereby respondents had to decide the petitioner's case afresh keeping in view the Circular dated 9.7.2014 issued by the Finance Department. The said circular stipulates that in case of recovery on the pretext of wrongful grant of increments or wrong fixation, interest shall not be levied. Therefore, it further appears that respondents quashed the recovery order so far as levy of interest is concerned and recovered only Rs.18,807/- as Principal sum.

4. Since after the order of recovery, petitioner approached this court and the petition was kept pending for around 18 months, therefore respondents withheld the gratuity amount of Rs.10 lacs and released the same on 23.4.2016.

5. The grievance of petitioner, as echoed in the petition, is that withholding of gratuity by the respondents was an arbitrary exercise of powers. According to him, gratuity could have been withheld as per Rule 65 of the

Madhya Pradesh Civil Services (Pension) Rules, 1976. Here, neither any departmental enquiry nor any criminal trial was pending against him. Therefore, withholding of gratuity on the pretext of pendency of writ petition is arbitrary and illegal. Alternatively, respondents could have withheld the gratuity to the extent of amount in question (which comes around Rs.1.87 lacs) as security and rest of the amount could have been released then and there. But the respondents did not do so. When the respondents claimed interest on such delayed payments and tried to recover an amount, which was not otherwise recoverable, sanctioned by law then adopting legal remedy by way of a writ petition cannot be a ground to withhold gratuity. Therefore, petitioner's gratuity was illegally withheld without any just and legal ground.

6. Learned counsel for respondents opposed the prayer and referred the contents of return. According to him, No Objection Certificate (NOC) was not given by the Officer on Special Duty (OSD) of Directorate of Ayush Department, Bhopal, whereas vide letter dated 13.11.2014, NOC to other officers were given. In pursuance thereof, vide letter dated 31.12.2014, District Pension Officer referred the objection raised by the Department which referred pendency of Writ Petition No.5903/2014. The orders dated 13.11.2014 and 31.12.2014 nowhere refer pendency of any departmental enquiry or criminal proceedings. Therefore, payment of gratuity was not made. When OSD issued NOC dated 19.2.2016, then immediately gratuity was paid. However, he prayed for dismissal of petition.

7. Heard the counsel for parties at length and perused the documents appended thereto.

8. This is a case where petitioner is seeking interest over the delayed

payment of gratuity on wrong pretext.

9. Petitioner retired on 31.12.2014 as Ayurvedic Medical Officer from Government Gandhi Ayurvedic Hospital, Morena. Before he could retire, recovery of Rs.1.87 lacs towards interest was made and proceedings were started. The said interest was tried to be extracted from the petitioner on the count that earlier Rs.18,807/- were given to the petitioner as wrongful grant of advance increments. That payment was made way back in the year 1987 and the petitioner never knew about such excess payment being made to him. However, he was subjected to recovery of payment with interest just at the fag end of his career. Although, recovery of interest got reconciled because of circular of the State Government dated 9.7.2014 issued by the Finance Department, which injuncts the State government to recover interest from employee. However, intention of petitioner here gains ground when he refers the exigencies under which gratuity could have been withheld. Here, apparently gratuity of petitioner was withheld as a security or respondents being annoyed by the fact that petitioner approached the court.

10. Rule 65 of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (for short, "the Rules") contemplates recovery and adjustment of Government dues. It reads as under:

65. Recovery and adjustment of Government dues. - (1) *It shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement.*

(2) *Where a retiring Government servant does not clear the Government dues and such dues are ascertainable -*

(a) *an equivalent cash deposit may be taken from him; or*

(b) *out of the gratuity payable to him, his nominee or legal heir, an*

amount equal to that recoverable on account of ascertainable Government dues shall be deducted.

Explanation. - 1. The expression "ascertainable Government dues" includes balance of house building or conveyance advance, arrears of rent and other charges pertaining to occupation of Government accommodation, over-payment of pay and allowances and arrears of income-tax deductible at source under the Income-tax Act, 1961 (No. 43 of 1961).

Rule 65 contemplates that all Government dues shall be cleared by the employee before the date of his retirement. If the dues are not cleared and are ascertainable, then an equivalent cash deposit may be taken from him purportedly as security and Clause (b) of Rule 65(2) of the Rules contemplates that equivalent to ascertainable dues can be deducted from the Government employee or his nominee/legal heir. Therefore, it was incumbent upon the respondents either to take an equivalent cash deposit or to deduct equivalent ascertainable dues which comes to Rs.1.87 lacs in the present case and rest of the amount of gratuity had to be paid to the petitioner without delay. However, respondents did not take an equivalent cash deposit as it precedes to the contingency of withholding of gratuity.

11. Therefore, the respondents erred in withholding the gratuity exceeding the equivalent amount to the ascertainable dues, amounting to Rs.1.87 lacs in the present case that too, without resorting to clause (a) of Rule 65(2) first.

12. Therefore, the petitioner appears to be just and right when he seeks interest over the delayed payment for the period when gratuity was withheld i.e. from 1.1.2015 to 23.4.2016.

13. Payment of interest in certain contingencies is governed by the Interest Act, 1978 as it deals in respect of the law relating to the allowance of interest in certain cases. Section 3 of the Act of 1978 deals in respect of power of court to allow interest.

14. Sections 3 and 4 of the Act of 1978 deals in respect of Power of Court to allow Interest and Interest payable under certain enactments. Both read as under:

"3. Power of Court to allow Interest.

(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,-

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings:

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

(2) Where, in any such proceedings as are mentioned in sub-section (1),-

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death,

then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages.

(3) Nothing in this section,-

(a) shall apply in relation to-

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement;

(b) shall affect-

(i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881 (26 of 1881); or

(ii) the provisions of Rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908);

(c) shall empower the court to award interest upon interest.

4. Interest payable under certain enactments.- (1) Notwithstanding anything contained in section 3, interest shall be payable in all cases in

which it is payable by virtue of any enactment or other rule of law or usage having the force of law.

(2) Notwithstanding as aforesaid, and without prejudice to the generality of the provisions of sub-section (1), the court shall, in each of the following cases, allow interest from the date specified below to the date of institution of the proceedings at such rate as the court may consider reasonable, unless the court is satisfied that there are special reasons why interest should not be allowed, namely :-

(a) where money or other property has been deposited as security for the performance of an obligation imposed by law or contract, from the date of the deposit;

(b) where the obligation to pay money or restore any property arises by virtue of a fiduciary relationship, from the date of the cause of action;

(c) where money or other property is obtained or retained by fraud, from the date of the cause of action.

(d) where the claim is for dower or maintenance, from the date of the cause of action."

15. Combined reading of sections 3 and 4 of Interest Act further substantiate the case of petitioner. Instant case is a proceeding under the Constitutional/Administrative Law to claim damages from State as per section 3. It is also a case, in which Interest is payable by virtue of usage, having the force of law as contained in section 4(1) of the Interest Act. Hon'ble Supreme Court, time and again, awarded the Interest on delayed payments. In case of ***Dr. Uma Agrawal v. State of U.P. and another 1999(3) SCC 438*** Apex Court given guidance in following words:

"5. We have referred in sufficient detail to the Rules and instructions

which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps at least two years in advance of the date of retirement. If the Rules/instructions are followed strictly, much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. The Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the court can certainly keep in mind the time-schedule prescribed in the Rules/instructions apart from other relevant factors applicable to each case."

Later on, in case of ***Y. K. Singla v. Punjab National Bank and others*** (2013) 3 SCC 472 and recently in the case of ***Dr. A. Selvaraj v. C.B.M. College and others*** (2022) 4 SCC 627 Apex Court awarded Interest on delayed payments. Case of petitioner falls under such exceptional category where, Interest is deserved to be awarded. In fact, in the present case, not only delay but arbitrariness is also apparent on record.

16. In the present case, gratuity has been withheld which was the legitimate right of petitioner and even if it was to be withheld then at best it could have been to the extent of Rs.1.87 lacs which was to be paid allegedly by petitioner, as part of recovery, not beyond that. Interestingly, proceedings of

payment of Rs.1.87 lacs as interest was later on withdrawn by the State Government itself. Therefore, on this Count also, submissions of petitioner gain grounds.

17. Therefore, when respondents deliberately held the payment of gratuity on wrongful pretext then certainly they are obliged to suitably compensate the petitioner in this peculiar facts and circumstances of the case and prayer of interest made by the petitioner in this petition appears to be just and proper.

18. Therefore, the respondents have to bear the burden of interest @ 6% p.a. (which is usually prevailing banking rate on Savings Account) for the period from 1.1.2015 to 23.4.2016 and that too on amount Rs.10,00,000 - Rs.1,87,000 = Rs.8,13,000 or so. Therefore, the respondent shall pay interest @ 6% p.a. on Rs.8,13,000 or so, for this period. The same shall be paid to the petitioner within two months from the date of receipt of certified copy of this order. It is made clear that this order does not give any liberty to the respondents to construe that interest amounting to Rs.1.87 lacs, as demanded by the respondents, is revived for recovery. That is a dispute, buried long back.

19. With the aforesaid observations, the **petition stands allowed and disposed of.**

(ANAND PATHAK)
JUDGE