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**THE HIGH COURT OF MADHYA PRADESH**  
**Writ Petition No.4476/2017**  
**Shyam Babu Sharma Vs. State of M.P. and others**

**Gwalior, Dated :02/01/2019**

Shri S.K. Sharma, Advocate for petitioner.

Shri Vivek Jain, Government Advocate for respondents/State.

This petition under Article 226 of the Constitution of India has been filed seeking payment of interest on delayed payment.

The necessary facts for disposal of the present petition in short are that the petitioner stood retired from service in the year 2008, however, for no reason, his post-retiral dues to the extent of Rs.1,28,690/- were withheld by the respondents, which were paid to the petitioner in the year 2017. Thus, it is submitted by the counsel for the petitioner that the petitioner is entitled for the interest for delayed payment. To buttress his contentions the counsel for the petitioner has relied upon the judgments passed in the case of **Dr. Kirti Saxena (Smt.) Vs. State of M.P. and others** reported in **2010 (1) MPHT 349** and in the case of **State of M.P. and others Vs. Ramji Das Agarwal** reported in **2013 (1) MPLJ 53**.

*Per contra*, it is submitted by the counsel for the State that in compliance of order dated 28/4/2018 passed in Writ Petition No.2596/2007 a decision was taken to give benefit of

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promotion notionally to the petitioner w.e.f.1/1/1993 and accordingly, re-fixation was made vide order dated 5/11/2016 and only thereafter, arrears of pay were paid to the petitioner in the year 2017.

Heard learned counsel for the parties.

It is clear from the return that after 2008 nothing was done by the respondents till 2016. Thus, they took eight long years for re-fixation. There is nothing in the return to justify such a delay on the part of respondents. Thus, it is clear that the respondents have failed to explain the delay in re-fixation. Accordingly, this Court is of the considered opinion that the petitioner has succeeded in establishing that for no valid reason the amount of Rs.1,28,690/- was not paid by the respondents.

In the case of **Dr. Kirti Saxena (supra)** this Court has held as under:-

“9. The respondents in the present case have not finalized the pensionary dues of the petitioner till date, though the petitioner has attained the age of superannuation on 30.4.2007. The Apex Court in the case of *S.K. Dua vs. State of Haryana and another*, (2008) 3 SCC 44, in Paragraph 14 has held as under:-

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“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 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.”

In the light of the judgment delivered by the Apex Court the petitioner is certainly

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entitled for interest also on delayed payment of retiral dues.”

In the case of **Ramji Das Agarwal (supra)** this Court has held as under:-

“5. It appears that till passing of the order impugned dated 24.1.2012, the aforesaid post retiral dues such as gratuity, full pension, leave encashment, arrears of pay revision were not paid by the department to the respondent. Of course, the Joint Director, Treasury, Accounts and Pension is also the part and parcel of the State. If any laches are committed by that office, the State cannot escape from their own liabilities for payment of post retiral dues to the respondent.

6. In *Uma Agrawal, Dr. vs. State of U.P.* reported in AIR 1999 SC 1212, the Hon'ble Apex Court held as under:-

“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

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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. 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.

6. The case before us is a clear example of Departmental delay which is not excusable. The petitioner retired on 30.4.1993 and it was only after 12.2.1996 when an interim order was passed in this writ petition that the respondents woke up and started work by sending a special messenger to various places where the petitioner had

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worked. Such an exercise should have started at least in 1991 two years before retirement. The amounts due to the petitioner were computed and the payments were made only during 1997-98. The petitioner was a cancer patient and was indeed put to great hardship. Even assuming that some letters were sent to the petitioner after her retirement on 30.3.1993 seeking information from her, an allegation which is denied by the petitioner, that cannot be as excuse for the lethargy of the Department inasmuch as the Rules and instructions require these actions to be taken long before retirement. The exercise which was to be completed long before retirement was in fact started long after the petitioner's retirement.

7. Therefore, this is a fit case for awarding interest to the petitioner. We do not think that for the purpose of the computation of interest, the matter should go back. Instead, on the facts of this case, we quantify the interest payable at Rs. 1 lakh and direct that the same shall be paid to the petitioner within two months from today.

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7. In *Vijay L. Mehrotra vs. State of U.P.* reported in *AIR 2000 SC 3513(2)*, the Hon'ble Apex Court held as under:

“3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.

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<sup>st</sup> August, 1997 till the date of payments.”

8. It would be profitable to quote here the relevant provisions of M.P. Civil Services Pension Rules, 1976:

मध्यप्रदेश सिविल सेवाएं (पेंशन) नियम, 1976 का नियम 57, पेन्शन के कागज पत्रों की तैयारी (Preparation of pension papers) –(1) जिस तिथि से शासकीय सेवक अधिवार्षिकी पर सेवानिवृत्त होने वाला है अथवा उस तिथि से जिससे सेवानिवृत्तिपूर्व छुट्टी पर जाता है, जो भी पहले हो, उससे दो वर्ष पूर्व प्रत्येक

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कार्यालय प्रमुख (प्रारूप 6ख) में पेन्शन पत्रों को तैयार करने का कार्य प्रारम्भ कर देगा। (वि.वि.क. एफ.बी. /6/1/77/नि-2/चार, दिनांक 1-2-77)

वित्त विभाग के ज्ञापन क्रमांक एफ.बी. 6/19/83/नि-2/चार, दिनांक 25-4-1984 द्वारा आदेशित किया गया था कि डी.सी.आर.ग्रेच्युटी की राशि का भुगतान देय होने के दिनांक से छः माह के भीतर नहीं किया जाता तो विलम्ब से होने की दशा में छः माह के बाद की अवधि के लिये 5 प्रतिशत की दर से साधारण ब्याज का भुगतान किया जाये। ब्याज की पात्रता उस स्थिति में ही गुण-दोष के आधार पर विचार करने के पश्चात होगी जहां यह स्पष्ट रूप से सिद्ध हो जाये कि भुगतान में विलम्ब प्रशासकीय कारणों से हुआ है।

राज्य शासन द्वारा अब यह निर्णय लिया गया है कि डी.सी.आर.ग्रेच्युटी के भुगतान में हुये विलम्ब के लिये देय ब्याज अब 5 प्रतिशत से बढ़ाकर 12 प्रतिशत की साधारण दर से संगणित की जाकर देय होगी।”

Since the respondents have failed to make out any plausible reason for not making payment of outstanding amount to the petitioner within the reasonable time and the delay of eight long years has remained unexplained, accordingly, this Court is of the considered opinion that the petitioner is entitled for the interest on delayed payment. Accordingly, it is directed that the respondents shall pay the interest at the rate of 6% per annum from the date of



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superannuation till the actual payment was made to the petitioner.

The petition succeeds and is hereby allowed.

**Arun\***

**(G.S. Ahluwalia)**  
**Judge**