

W.P.(C) No.10845 of 2009

-Versus-

Mr. Bibekananda Nayak,
Standing Counsel (Central Govt.)
(For opposite party No.4)

Date of hearing: 22.11.2016 Date of Judgment:31.01.2017

Dr. D.P. Choudhury, J. Challenge has been made to the inaction of the opposite parties for not sanctioning the interest on the delayed payment of the pension and gratuity.

FACTS

2. The factual matrix leading to the case of the petitioner is that the petitioner initially joined as Supervisor, telecommunication under erstwhile Orissa State Electricity Board (hereinafter called "the Board") and after rendering more than 28 years of service promoted to the rank of Assistant Engineer on 17.5.1996. At that time Board was re-designated as Grid Corporation of Orissa (GRIDCO) in accordance with the Orissa Electricity Reform (Transfer of undertaking, Assets, Liability and Personnel) Rules, 1996. Be it stated that the aforesaid Rule was framed under the Orissa Electricity Reform Act 1995 under which the services of all the Telecommunication Engineers including the petitioner appointed under the Board were transferred to GRIDCO for permanent absorption with effect from 1.4.1997.

3. It is the case of the petitioner that from 1.4.1997 the employees whose services seized with Board got absorbed with the GRIDCO would get pension after absorption under GRIDCO, petitioner submitted application for voluntary retirement and vide order No.72794 dated 22.12.1998 the authority under GRIDCO accepted the voluntary retirement of the petitioner and accordingly the petitioner got retired from GRIDCO voluntarily on 31.1.1999.

4. In the meantime Government of Orissa in the Department of Energy sought option from the petitioner whether he would draw the pension from the Government or not and the petitioner along with similarly situated Engineers opted to draw their pension from the Government till the date of their permanent absorption in GRIDCO. Pending consideration of such option, the petitioner was sanctioned payment of provisional pension with effect from 1.4.1997 but he was not paid with such provisional pension till 8.4.2009. After the Additional Secretary to Government in the Department of Energy issued a letter on 30.1.2009 to the District Treasury Officer, Khurda stating that the petitioner has not been paid with provisional pension, commuted value of pension and gratuity vide Annexure-6. Petitioner was paid with all his pensionary benefits, i.e., the pension from 1.4.1997 to 31.3.2009 amounting to Rs.10,44,116/- and gratuity of Rs.1,49,350/- on 8.4.2009. Such pension was only paid without any interest to the petitioner.

5. Be it stated that the petitioner is no way responsible for the delay occurred during the process of sanctioning and disbursing the pensionary benefits although the petitioner supplied all information in time when the authority sought for same in respect of pension. Due to the inaction of the opposite

parties petitioner had also filed a writ application vide O.J.C. No.9922 of 2001 with a prayer to fix up his pay in accordance with Rule 74 (b) of the Orissa Service Code which was disposed of on 6.8.2004 with a direction to the present opposite parties to inform the petitioner about the requirements for sanction of regular pension and after necessary compliance of the present petitioner, the opposite parties would take a decision within a period of two months. In spite of the order of this Court no communication was made by the opposite parties to the present petitioner about the requirements and formalities. However, later the Government sought for original service proofs of the petitioner from the GRIDCO. Since the order could not be complied, the petitioner had filed CONTC No.65 of 2005 before this Court and in that contempt petition the Principal Secretary to Government, Department of Energy informed the Court that vide letter No.3081 dated 9.3.2005 the pension, gratuity and commuted value of pension of the petitioner has been sanctioned and his pay has been fixed under Rule 74(b) of the Orissa Service Code. After this fact being informed to the Court, the Court passed order in the contempt petition to supply photo copy of the sanction letter dated 9.3.2005 to the petitioner. But despite such order to supply a copy in course of the day, i.e, on

17.8.2007, the opposite parties supplied the copy of the sanction order on 13.11.2007.

6. After receipt of the sanction order, the petitioner found that the opposite parties have failed to sanction appropriate scale of pay under Rule 74 (b) of the Orissa Service Code in favour of the petitioner for which he filed Misc. Case No.884 of 2007 in the disposed of writ application bearing O.J.C. No.9922 of 2001 which was dismissed by this Court on 14.2.2008. Since the opposite parties failed to pay the pensionary benefits right from 1.4.1997 to 31.3.2009 and the gratuity was also not paid for such period, the petitioner preferred this writ application for allowing payment of interest on the delayed payment of pension and gratuity @ 18% per annum.

7. Per contra, the opposite party No.1 filed counter affidavit stating that the writ petition is not maintainable and there is delay in sanctioning and disbursement of pension is attributable to the absolute non-cooperation of the petitioner in not furnishing the required certificates to enable the Department to draw and disburse his provisional pension sanctioned since 4.1.2002. On the other hand, due to non-cooperation of the petitioner, the delay was only caused in drawal and disbursal of the pensionary benefit. Be it stated that due to permanent

absorption of the petitioner along with similarly placed persons under the provisions of the Orissa Electricity Reforms Act, 1995, a huge exercise has to be purportedly undertaken by the opposite parties for payment of same and thereby causing delay in issuing letter of sanction in 2000. Only after receiving all the documents from GRIDCO, the Department of Energy sanctioned provisional pension and commuted value of pension on 4.1.2002. After sanction of the provisional pension, the petitioner was required to submit his non-employment certificate for which the same was called for vide letter dated 16.8.2002.

8. As the petitioner did not reconcile his minus G.P.F. balance out-lay before the Accountant General, the disbursal of his final pensionary benefit was again complicated. It is the further case of the opposite parties that the Accountant General, Orissa had intimated the Department of Energy to recover Rs.3,05,216/- from the petitioner towards minus balance of G.P.F. which was later finalized and reduced to Rs.1,57,647/- by the opposite party No.4 (Accountant General (A&E), Orissa) and this was intimated to the Department of Energy on 3.12.2004. In spite of the letter of the Accountant General (A & E), Orissa and the same being communicated to the petitioner by the opposite party No.1 to deposit the amount of negative balance of G.P.F.

but the present petitioner failed to comply the same and submitted to adjust the recoverable amount from his gratuity/interest amount of his dues already accrued by law for delayed payment along with the rest of the provident fund accumulation. But the State Government being not empowered to adjust the minus G.P.F. balance, did not finalize the dispute. After receipt of the order from this Court in O.J.C. No.9122 of 2000 final pension of the petitioner was sanctioned vide letter No.3081 dated 9.3.2005 and the same was sent to the Accountant General, Orissa with a suggestion to recover Rs.1,57,647/- as minus balance of G.P.F. and Rs.37,563/- as excess payment made to the petitioner earlier due to wrong fixation of pay by way of Reducible Personal Pay. Accordingly the Accountant General, Orissa issued authorization in favour of pension and commuted value of pension vide letter dated 25.4.2005 to the opposite party No.1 with a copy to the petitioner.

9. Be it stated that as the petitioner did not take step for adjustment of the G.P.F. minus balance in spite of the subsequent letter dated 20.12.2005, the Accountant General, Orissa asked the Department of Energy to return the Pension Payment Order and Commutation Pension Order. Then the

opposite party No.1 returned Pension Payment Order (hereinafter called 'PPO') and commuted value of pension to the Accountant General, Orissa on 10.1.2006. It is the case of the opposite party No.1 that due to sole attitude of non-cooperation on the part of the petitioner for not giving non-employment certificate and other requirements like taking steps to reconcile the minus G.P.F. balance amount, the delay was caused in payment of the Pension and gratuity.

10. As per the order of the Court, the petitioner has not complied the formalities and resultantly the opposite party No.1 could not disburse the pensionary benefit. Had the petitioner cooperated well with the pension sanctioning authority and Accountant General, he could have received the substantial amount of pensionary benefit much before 13.1.2009. So, the opposite parties are no way responsible for delayed payment of the pensionary benefit of the petitioner and as such no interest can be payable for the delayed payment of the pensionary benefit to the petitioner.

11. The opposite party No.4 has filed the separate counter affidavit stating that after retirement of the petitioner from Government service, the pension papers of the petitioner were forwarded to the office of the opposite party No.4 by

Pension Sanctioning Authority vide letter No.3081 dated 9.3.2005 and in that case also the Pension Sanctioning Authority had instructed to recover an amount of Rs.1,95,209.25 (Rs.1,57,647/- towards minus balance in G.P.F.+Rs.37,562.25 towards excess payment). So, the Pension Payment Order and Commutation Payment Order were issued by the opposite party No.4 authorising the petitioner to draw the same on 21.4.2005. Since the total admissible amount of DCRG of Rs.1,23,250/- being insufficient to adjust the suggested recovery of Rs.1.95,209.25, the opposite party No.4 intimated the opposite party No.1 to recover Rs.71,959/- from the petitioner.

12. Be it stated that the opposite party No.1 intimated the opposite party No.4 vide letter dated 5.8.2008 that due to increase of the pension on re-fixation of the scale of pay, recovery of excess payment of Rs.37,562.25 may not be necessary. After receipt of the Pension papers of the petitioner from the opposite party No.1 vide letter dated 9.9.2008 of opposite party No.1, the revised pensionary benefits as well as differential gratuity amount were calculated and accordingly the opposite party No.1 was intimated. Then Pension Sanctioning Authority submitted revised pension papers of the petitioner fixing his pay at Rs.10,500/- to opposite party No.4 with a request to issue a revised authority. So, the opposite party No.4

issued the revised pension and gratuity authority in 2015 after adjusting the recovery of the amount as intimated by the Pension Sanctioning Authority. It is stated that the opposite party No.4 has taken always prompt steps after the necessary pension papers received from the opposite party No.1. So, the opposite party No.4 is not liable towards payment of interest.

13. Petitioner has filed the rejoinder reiterating the stand taken in the petition. It is only added in the rejoinder that even if the petitioner with the knowledge of the opposite party has been absorbed in GRIDCO since 1.4.1997 and working there till his retirement, requirement of non-engagement certificate was uncalled for. Moreover, it is the case of the petitioner that for drawal of the provisional pension, the submission of the non-employment certificate is not required under the Orissa Civil Services (Pension) Rules, 1992 (hereinafter called "Pension Rules"). Moreover, the role of the petitioner in no way attributable for delayed payment of the provisional and final pension to the petitioner. Since there is delayed payment of the provisional pension and no formalities is required for payment of the provisional pension, the petitioner is entitled for interest on delayed payment for long after 12 years of the date of his retirement. So, the O.Ps. cannot wriggle out from the payment of interest on the delayed payment of the pension and gratuity.

SUBMISSIONS

14. Mr. P.K. Rath, learned counsel for the petitioner submitted that there is no fault on the part of the petitioner to comply the formalities on being asked by the opposite parties. He further submitted that whether it is provisional pension or regular pension including the gratuity under the Orissa Service Code, the employer is liable to pay the interest on the delayed payment of the pension or gratuity. Under Section 7 (3) of the Payment of Gratuity Act also the employee is entitled to the interest on the delayed payment of pension and gratuity. Learned counsel for the petitioner also relied upon the decision of the Hon'ble Supreme Court in the case of ***D.D. Tewari (D)Thr. LRs v. Uttar Haryana Bijli Vitran Nigam Limited and others***, reported in ***AIR 2014 SC 2861***, where Their Lordships observed that where there is withholding of payment of gratuity erroneously under the Payment of the Gratuity Act, 1972 (hereinafter called "the Act"), the petitioner is entitled to pay the interest on the delayed payment of the gratuity. So, he submitted to allow the interest on the delayed payment of the pension including the provisional pension and gratuity.

15. Mr. P. K. Mohanty, learned Additional Standing Counsel for opposite party Nos.1 and 2, Mr. B. K. Pattnaik, learned counsel for opposite party No.3 and Mr. B. Nayak,

learned Central Government Counsel for opposite party No.4 in order to meet the rival contention submitted that in the instant case after retirement of the petitioner from the Board with effect from 1.4.1997, the provisional pension has been sanctioned but the same could not be disbursed due to non-cooperation by the present petitioner to submit the documents. They also submitted that the facts and circumstances of each case must be taken into consideration while awarding interest on delayed payment of the gratuity. They submit that this Court in W.P.(C) No.9883 of 2005 were to consider the claim of similarly situated employees to grant interest on the delayed payment of gratuity. In that case this Court has not relied upon the decision reported in ***D.D. Tewari (D) Thr. LRs v. Uttar Haryana Bijli Vitran Nigam Limited and others***, (supra) by distinguishing the same on the facts and circumstances of that case. Relying upon such decision, he submitted that in the present case petitioner himself having not co-operated the opposite parties in finalizing the pension and gratuity, is not entitled to any interest on the delayed payment of gratuity and pension.

16. The main points for consideration:-

- (i) Whether there is non-cooperation by the petitioner for sanctioning the pension and gratuity?

(ii) Whether the petitioner is entitled for interest on delayed payment of the pension, gratuity including the provisional pension and provisional gratuity?

DISCUSSIONS

POINT NO.(i) :

17. It is admitted fact that the petitioner was serving in the Board and after the establishment of GRIDCO, he was working as Assistant Engineer under GRIDCO with effect from 1.4.1997 till his retirement, i.e., on 31.1.1999 when he voluntarily retired from GRIDCO. It is not in dispute that he has sought for pension from the State Government with effect from 1.4.1997 as he has rendered more than ten years of service under the State Government. It is also admitted fact that he has not received provisional pension, pension and gratuity with effect from 1.4.1997 till year 2009 when the same were paid to the petitioner.

18. It is not in dispute that the petitioner has filed O.J.C. No.9922 of 2001 before this Court for payment of pension and this Court passed order on 6.8.2004 directing the opposite parties to take a decision for payment of regular pension within a period of two months. It is also not in dispute that due to non-compliance of the order, the petitioner had filed CONTC No.65 of

2005 before this Court for compliance of the order and this Court directed the State Government to supply the photocopy of the sanction order dated 9.3.2005 to the petitioner as the opposite parties took the plea that the State Government has sanctioned the pension, gratuity and commuted value of pension vide letter No.3081 dated 9.3.2005 and there is fixation of pay under Rule-74(b) of Orissa Service Code. Again, the petitioner preferred W.P.(C) No.6707 of 2008 with a prayer to direct the opposite parties to sanction appropriate scale as per Rule-74(b) of the Orissa Service Code and the same is sub-judice.

19. There is only dispute between the parties when the petitioner claims that in spite of all efforts, he had not received the provisional pension which he ought to have received immediately after retirement from Government service and got regular pension after twelve years of his retirement whereas the opposite parties refuted the same by stating that the delay in making payment of the pensionary benefits occurred due to the non-cooperation by the petitioner to the opposite parties.

20. Both the parties have produced documents in support of their plea taken in the writ petition and counter affidavit. It will be worthwhile to discuss the documents in respect of their respective plea. Annexures-2, 3 and 4 show that

pursuant to the provisions of the Orissa Electricity Reform Act, 1995 and the Orissa Electricity Reform (Transfer of undertakings, Assets, Liabilities, Proceedings & Personnel) Scheme Rules, 1996, the petitioner along with other Assistant Engineers working under the Board were absorbed with effect from 1.4.1997 and they were allowed to receive pension from the State Government with effect from 1.4.1997 as their services were seized as Government servant from 31.3.1997 after being absorbed in the GRIDCO with effect from 1.4.1997. Annexure-5 shows that on 4.1.2002, the petitioner was issued sanction order for provisional pension with effect from 1.4.1997. The same is also admitted by the opposite party no.1 to have been issued vide Annexure-A/1. The opposite party no.1 took the plea that they have issued the letter to the petitioner on 16.8.2002 and 17.1.2003 vide Annexure-B/1 and Annexure-C/1 to furnish non-employment certificate for drawal of provisional pension and arrear claim. These two documents go to show that they are draft for approval but not the office copy of issuance of the same to the petitioner. Moreover, when the provisional pension was sanctioned on 4.1.2002, it is not understood as to why much thereafter letters were issued for furnishing the non-employment certificate by the petitioner for drawal of the provisional pension arrear claim. Such Annexure-B/1 and Annexure-C/1 do not

disclose for which period the non-employment certificate has been asked for. So, the plea of the opposite party no.1 as to failure on the part of the petitioner to furnish the required documents as called for though such documents are not being satisfactorily proved.

21. It is revealed from the counter affidavit of opposite party no.3 that they have issued letter dated 19.4.2002 vide Annexure-C/3 to the effect that final GPF account arrived at a minus balance of Rs.3,05,216/- and the petitioner was asked to deposit said amount under appropriate Head of Account. At the same time, it has been mentioned in counter affidavit that they have asked the petitioner to file certain relevant documents and he has complied the same on 2.8.2000 and then all documents were forwarded to the Government of Orissa. If at all the petitioner has complied all the documents and all were sent to the State Government in the Department of Energy, the plea of the opposite parties that the petitioner did not comply the requirements is not correct. Moreover, the opposite party no.3 has not annexed any paper to show the minus balance of Rs.3,05,216/- arrived by the opposite party no.4. On the other hand, the opposite party no.1 filed a document vide Annexure-D/1 issued by the Sr. Accounts Officer, Orissa, Office of the

Accountant General (A & E), Orissa, Bhubaneswar to show that they have sent letter to recover an amount of Rs.1,57,647/- as minus balance in GPF account of the petitioner from the gratuity of the petitioner. This letter appears to have been issued on 3.12.2004 but again vide Annexure-E/1 to the counter of opposite party no.1, the opposite party no.1 showed the Office Note to show that the petitioner was asked to deposit the minus balance of GPF for Rs.2,55,127/- and to furnish LPC in original towards finalization of pension. Since the amount of minus balance in the GPF account of the petitioner varies from time to time, mistake on the part of the petitioner for non-compliance of the same cannot be said to be deliberate one or he intentionally avoided to pay the same.

22. Further, the opposite parties filed the copy of the documents vide Annexure-F/1, which goes to show that the opposite party no.1 sent all pension papers of the petitioner to opposite party no.4 vide letter no.3081 dated 9.3.2005 for sanctioning of the pension and in that letter, there is an endorsement to recover Rs.1,57,647/- as minus balance in GPF and Rs.37,561/- excess payment of RPP. The same document has also been admitted by the petitioner in his writ petition. So, it is the opposite party no.1 who sent all the pension papers only

on 9.3.2005 to the Accountant General, Orissa, Bhubaneswar for sanctioning of regular pension to the petitioner. There is nothing found from the counter affidavit or the documents filed to show any provisional pension was disbursed to the petitioner in pursuance of the sanction of the provisional pension on 4.1.2002.

23. The opposite party no.1 filed the sanction of commutation of pension vide Annexure-G, which is part of the pensionary benefits of the petitioner stated to have been issued by opposite party no.4 on 12.4.2005. The opposite party no.1 also relied on Annexure-H/1 which shows that the Pension Payment Order and commuted value of pension order of the petitioner was called back since the DCRG amount payable to the petitioner falls short of Rs.34,397/- to meet the GPF minus balance amount and the revised pension payment for Rs.37,562/- and accordingly those papers were returned. But, there is no any instruction from the Accountant General (A & E) Orissa for non-disbursement of the provisional pension.

24. The opposite party no.4, in their counter affidavit, admitted all these documents and specifically stated that after receiving all pension papers of the petitioner from the opposite party no.1 on 9.3.2005, they made scrutiny and on their part,

there is no delay in taking action. Rather, they have revised the pay of the petitioner from time to time as per the order of this Court vide Annexure-A/4 and accordingly pension has been revised. Finally on 5.1.2009, the pension was allowed for disbursement by PPO No.351394. On the other hand, the petitioner filed a letter dated 25.9.2004 whereunder he has informed that the State Government to deduct the minus balance shown in his GPF account vide letter dated 15.9.2004 to be adjusted from his gratuity/interest amount. The GRIDCO has also informed vide Annexure-11 to recover any amount towards the GPF minus balance from the terminal benefits of the petitioner. Not only this, but also the petitioner has also filed a copy of the letter dated 13.9.2004 vide Annexure-12 to show that since he has not been communicated with any letter to comply any formalities, he has nothing to comply in compliance of the order of this Court passed in OJC No.9922 of 2001.

25. It is the case of the petitioner that due to non-sanction of any provisional pension, regular pension, gratuity and other pensionary benefits, the petitioner had to file OJC No.9922 of 2001 before this Court and this Court, on 6.8.2009, passed an order directing the opposite parties to communicate the requirements and formalities to the petitioner within two

weeks and then the petitioner would comply the same for the sake of sanction of the pension which was then kept under active consideration of the Government. So, it appears that the petitioner had knocked the door of this Court for direction to the opposite parties for disposal of the pensionary benefits. Not only this, but also it is revealed from the writ petition that since the order was not complied, the petitioner had to file CONTC No.65 of 2005 which was also disposed of on 17.8.2007 directing the learned State Counsel to supply the photocopy of the sanction order of the Government dated 9.3.2005 as to sanction of the pensionary benefits and it was complied on 13.11.2007. It is further revealed from the petition that since the salary of the petitioner was not revised as per the rules, he had filed a misc. case in OJC No. 9922 of 2001, but it was dismissed as not maintainable. Then, the petitioner preferred another writ petition, i.e, W.P.(C) No.6707 of 2008 to direct the opposite parties to sanction appropriate scale as per Rule-74(b) of the Orissa Service Code. But the present writ petition is unconnected with the relief asked in W.P.(C) No.6707 of 2008.

26. From the above marathon discussion, it is clear that the opposite parties have played hide-and-seek with the petitioner by not granting provisional pension, commutation of

pension and gratuity because the provisional pension which ought to have been sanctioned without scrutiny of detailed formalities as per Rule 65 of the Orissa Civil Services (Pension) Rules, 1992 immediately after the retirement. But, the same was only sanctioned on 4.1.2002 and that to say it was not disbursed because of some vague objection which was only raised after issuance of the sanction letter. Moreover, it is felt necessary to observe that only after filing of the writ petition by the petitioner in the year 2001, the matter proceeded but with snail's pace. Since the petitioner was working in GRIDCO and asking for pension from the State Government in the Department of Energy, correspondence was made between the departments occasionally to show that the offices are busy in complying the process of payment of pension. It is made clear by the opposite party no.4 that only on 9.3.2005, all pension papers were sent. When the petitioner has given in writing, before hand that any amount to be recovered may be adjusted against his gratuity or pensionary benefit, there is no question of keeping his matter pending till 2009 when the Court has to again enter into the dispute in a contempt petition.

27. Apart from this, when the petitioner has already been absorbed in the GRIDCO after the necessary order passed by the State Government in consultation with GRIDCO vide

Annexures-2, 3 and 4, the question of asking for non-employment certificate and non-drawal of the salary of the petitioner are otiose. It is lamentable to observe that the opposite parties have shown lackadaisical attitude which caused delay in making payment of the pensionary benefits including the provisional pension of the petitioner for no fault of him and the matter has been only expedited due to the intervention of the Court from time to time, which is very sorry affairs on the part of the opposite parties. Be that as it may, it must be observed that there is no non-cooperation by the petitioner for the sanction of the provisional pension, regular pension and the gratuity. Point No.I is answered accordingly.

28. POINT No. (II)

Annexure-1 shows that in pursuance of the order of this Court passed in OJC No.6886 of 1999 on 8.9.1999, the State Government in Public Grievances and Pension Administration Department has issued instruction to all the Departments of Government and all Heads of Department in the following manner:

"xx xx xx xx

Authority	Duty of authority	Time Schedule	Relevant provisions/ notification
1	2	3	4
1.Head of Office	1. Verification of service particulars prior to retirement.	He shall verify the service of Government servant 5 years before the date of	Finance Department O.M.

		retirement or after 25 years service which is ordinarily extended	No.5731/F., dated 5.2.1997
	2. Processing of pension papers.	2.He shall prepare pension papers 2 years before the date of retirement on superannuation	Sub-rule(1) of Rule 58 of the Rules.
		ii) He shall obtain the particulars from Govt. servant at least one year before the retirement and complete processing of pension papers not later than 8 months in advance of the date of retirement.	Sub-rule (2) of Rule 58 of the Rules
		iii) Where Head of Office is not the Appointing Authority, the pension papers shall be transmitted to the PSA one year before the date of retirement.	Sub-rule (3) of Rule 58 of the Rules
		iv) Head of Office shall complete part 1 of OCS (P) Form 7 not later than 6 months of the date of retirement and forward the same along with Form 6 to the Appointing Authority.	Rule 61 of the Rules.
2. Pension sanctioning Authority (Appointing Authority)	Sanction of pension	Appointing Authority shall sanction the pension and intimate the same to the A.G. not later than 4 months before the date of retirement of Govt. servant.	Rule 62(2) of the Rules.
3. Accountant General, Orissa	Authorisation of P.P.O./G.P.O.	A.G. shall issue the P.P.O./G.P.O. not later than one month in advance of the date of retirement.	Rule 64 (1) of the Rules.

2. For sake of ready reference the extract of the para.18 of the aforesaid judgment dated 8.9.99 of the Honourable High Court of Orissa is reproduced below:

"We dispose of this application with a direction to the State Government to administratively instruct all the Heads' of Department and the concerned officials to ensure that different steps prescribed to be taken under the Rules are rigidly followed and any non-observance thereof is to be strictly viewed. If there is any delay in payment of pension the pensioner shall be entitled to 18% interest per annum for the period of delay and this interest shall be recovered from the person/persons responsible for the delay. While fixing the rate of interest, we have kept in view the minimum bank rate of interest changed for borrowing from bank. This aspect shall also be notified to all concerned. We are sure, if such stringent steps in addition to those, which the State Government may feel necessary to impose, are taken there shall be aided compliance of the requirement of law and in future the old retired persons shall not be required to move in the corridors of the Court with tears in their eyes and a faint any of hope of getting remedy early, and not posthumous."

3. In pursuance of the above orders of the Hon'ble High Court, it is hereby instructed that all concerned should rigidly follow the time schedule for sanction of pension as mentioned above. Otherwise the pensioner will be liable to get interest @18% per annum for the period of delay and this interest shall be recovered from the person/persons responsible for such delay. In case there exist sufficient reasons for non-sanction of pension and gratuity by the date of retirement, the pension-sanctioning authority should see that the retiring govt. servant is sanctioned with provisional pension and provisional gratuity as provided under rule 65 of O.C.S. Pension Rules, 1992. For the purpose of grant of provisional pension and provisional gratuity in accordance with the aforesaid rule Pension Sanctioning Authority need not earlier insist on or wait for a formal application from the retiring Govt. servant.

4. At times pensions are not finalized on the plea that the information sought for from the office down below have not been received. At other times pleas are taken that for non-disposal of proceedings against the retired employees, pension payments are getting delayed. If the delay is caused due to non-furnishing of required particulars within the time, the persons concerned are also to be taken to task and held responsible for payment of interest in part or full. If the proceedings are not finalized within the stipulated time, the officer concerned should be taken to task and held responsible for payment of interest. These stipulations are, however, subject to the condition that the concerned employee who is due for retirement or has retired furnishes the required information/documents (like specimen signature, photo etc.) to the respective authorities for processing the pension papers as per the stipulated time. For this, the authority shall have to ask the concerned employee, in writing to furnishing such information as and when required specifying the time limit.

Xx xx xx xx''

29. From the aforesaid instruction issued by the Government on the line of the judgment of this Court, it appears that no such provision as enshrined in the Orissa Civil Services (Pension) Rules, 1992 read with aforesaid instruction of the State Government have been followed from the fact and circumstances as discussed above. Even the provisional pension which ought to have been sanctioned and disbursed without requiring any formality have also not been followed. It has already been observed in the aforesaid paragraphs that the petitioner has no fault in furnishing the documents and complying the direction of the Department. So, the opposite parties have not only violated the provisions of the Rules, 1992

but also have violated the right of the petitioner to get pension on time. It must be remembered that pension is not a bounty or charity but it is a right of every Government servant to receive the same.

30. Learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in the case of ***D.D. Tewari (D)Thr. LRs v. Uttar Haryana Bijli Vitran Nigam Limited and others, (Supra)*** where Their Lordships, at paragraphs-5 and 6, have observed as under:

"5. It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972. Having regard to the facts and circumstances of the case, we do not propose to do that in the case in hand.

6. For the reasons stated above, we award interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of entitlement till the date of the actual payment. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date of amount falls due to the deceased employee. With the above directions, this appeal is allowed."

31. From the aforesaid decision, it appears that for delayed payment of gratuity under the provisions of Payment of

Gratuity Act, 1972, the interest is payable on the delayed payment of gratuity and not only this but also the interest is payable on the delayed payment of pension and gratuity from the date of entitlement till the date of actual payment.

32. Learned Central Government Counsel and the learned Additional Government Advocate, in contrast to the submission of the learned counsel for the petitioner, cited the decision of this Court passed in W.P.(C) No.9883 of 2005 disposed of on 8.1.2016 and submitted that in view of the judgment passed by this Court in W.P.(C) No.9883 of 2005, the present writ petition should be rejected because the facts and circumstances of that case is similar to the facts and circumstances of this case. He further submitted that the decision of the Hon'ble Supreme Court in the case of ***D.D. Tewari (D)Thr. LRs v. Uttar Haryana Bijli Vitran Nigam Limited and others (Supra)***, has not been followed by this Court for the reason that the facts and circumstances of ***D.D. Tewari (D)Thr. LRs v. Uttar Haryana Bijli Vitran Nigam Limited and others, (Supra)*** are different from the facts and circumstances of the case in W.P.(C) No.9883 of 2005. After going through the judgment of this Court, it appears that in that case, the petitioner has fault in not complying the requirements

as asked and this Court has also observed that the petitioner in that case has not taken the recourse to any Court of law but demanded payment of interest after long time of regularization of service in the year 1968. Now, in the present case, it has already been observed that the petitioner has no laches in complying the requirements as asked by the opposite parties and the opposite parties are at fault in causing the delay in payment of pension and gratuity. Rather, the facts and circumstances of this case is more similar to the fact and circumstances in the case of ***D.D. Tewari (D)Thr. LRs v. Uttar Haryana Bijli Vitran Nigam Limited and others, (Supra)***. Hence, the decision of this Court in W.P.(C) No.9883 of 2005 is inapplicable to this case.

33. With due respect to the decision of the Hon'ble Supreme Court in the Case of ***D.D. Tewari (D)Thr. LRs v. Uttar Haryana Bijli Vitran Nigam Limited and others, (Supra)*** and in view of the facts and circumstances of this case that the opposite parties have got laches in causing the delay in sanction the pension and gratuity of the petitioner long after twelve years of his retirement, this Court would like to award interest on the delayed payment of pension and gratuity from the date of entitlement till the date of actual payment. Point No.(II) is answered accordingly.

34. CONCLUSION

From the foregoing discussion and relying on the decision of the Hon'ble Supreme Court in the case of ***D.D. Tewari (D)Thr. LRs v. Uttar Haryana Bijli Vitran Nigam Limited and others (Supra)***, the writ petition is disposed of with a direction to the opposite parties to award interest @ 9% per annum on the delayed payment of pension and gratuity amount from 1.4.1997 till the date of actual payment in 2009. It is further directed that if this payment is not paid within eight weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date the amount falls due to the petitioner.

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Dr. D.P. Choudhury, J.

ORISSA HIGH COURT: CUTTACK
 Dated the 31st January, 2017/Kar