

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

CWP No. 10013 of 2023

Decided on: 29th February, 2024

Sh. Shiv Lal

.....Petitioner

Versus

The Himachal Pradesh Tourism
Development Corporation.

.....Respondent

Coram

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ Whether approved for reporting?

For the petitioner: Mr. Om Prakash Goel, Advocate.

For the respondent: Ms. Shilpa Sood, Advocate.

Ranjan Sharma, Judge (Oral)

With the consent of the parties, the instant
writ petition, is taken up for disposal, at this stage, in
view of the order(s) intended to be passed hereinafter.

2. The petitioner, having retired on 31.03.2022
from the post of MDH from the Respondent-Corporation,
has filed the writ petition with the following prayers:-

“(a) That a writ of mandamus or any other
appropriate writ order or directions may kindly
be issued directing the respondents to release

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

the revised higher amount of gratuity and leave encashment in favour of the petitioner in terms of the revised pay rules as well as the payment of gratuity (amendment) Act, 2018 alongwith interest @ 9% per annum.

(b) That a writ in the nature of Mandamus or any other appropriate writ order or directions may kindly be issued directing the respondent to release the arrears along with interest @ 9% per annum on account of the delayed period payment.”

3. Case of the petitioner is that he retired from service of the Respondent-Corporation as a Manager on 31.03.2022 and he was sanctioned the Gratuity amounting to Rs.10,00,000/- (Ten Lakhs) on 28.06.2022 (Annexure P-3). The State Government issued the H.P. Civil Services (Revised Pay) Rules on 03.01.2022, revising the pay scales of its employees w.e.f. 01.01.2016; and thereafter the State Authorities issued another Office Memorandum on 25.02.2023 giving the revised retiral benefits i.e. revised pension, revised gratuity, revised commuted pension and revised leave encashment to its employees w.e.f. 01.01.2016. Paras 6.1 and 6.2 of the

Office Memorandum dated 25.02.2023, dealing with the admissibility of “Retirement Gratuity/DCRG” whereby the maximum admissible amount of DCRG of Rs.10,00,000/- (Rupees Ten Lakhs) was allowed to Rs.20,00,000/- (Rupees Twenty Lakhs) w.e.f. 01.01.2016, read as under:-

6.1 The rates for payment of death gratuity shall be revised as under:-

Length of qualifying service	Rate of Death Gratuity
Less than one year	2 times of monthly emoluments
One year or more but less than 5 years	6 times of monthly emoluments
5 years or more but less than 11 years	12 times of monthly emoluments
11 years or more but less than 20 years	20 times of monthly emoluments
20 years or more	Half month's emoluments for every completed six-monthly period of qualifying service subject to a maximum of 33 times of emoluments.

6.2 The maximum limit of retirement gratuity and death gratuity is enhanced from Rs.10 Lakhs to Rs.20 Lakh. The revised rates of retirement gratuity and death gratuity shall be admissible w.e.f. 01.01.2016.

The first proviso under Rule 50(1)(b) of CCS (Pension) Rules, 1972 shall stand modified to this extent.”

4. Learned counsel for the petitioner submits

once the Office Memorandum dated 03.01.2022 giving revised pay scale w.e.f. 01.01.2016 and the Office Memorandum dated 25.02.2023, giving revised retiral benefits w.e.f 01.01.2016 to the employees of the State Government have been adopted by the Respondent-Corporation then, the employees of the Corporation, including the petitioner is eligible for admissible amount of Revised Gratuity/DCRG, out of the enhanced limit of Gratuity of Rs.20,00,000/- (Twenty Lakhs) w.e.f. 01.01.2016.

5. In these circumstances, learned counsel for petitioner submits that once the petitioner retired on 31.03.2022, then the petitioner is entitled to the Revised/Enhanced Gratuity, under the CCS (Pension) Rules on the date of retirement but the Respondent-Corporation has already paid an amount of Rs.1,00,000/- (Rupees One Lakh Only), whereas, the “admissible amount of Revised Gratuity” has been withheld till day. He further submits that the non-

release/withholding of Revised Enhanced Gratuity without giving prior notice and personal hearing is illegal. Learned counsel for the petitioner submits that once neither any departmental proceeding nor any criminal prosecution was pending on date of retirement then, denial or withholding revised Gratuity is illegal. It is further submitted that once no Government-Corporation Dues are outstanding against the petitioner on the date of retirement then, withholding and non-release of “admissible amount of Revised Gratuity”, without the authority of law, is violative of Articles 14, 16 and 300-A of the Constitution of India.

6. Learned counsel for the petitioner further submits that in view of the non-release/withholding of Revised Enhanced Gratuity arbitrarily till day, the petitioner is entitled to the Statutory Interest on retiral benefits from the due date till realization under Rule 65 of the CCS (Pension) Rules @ 7.1% per annum.

7. In the above background, learned counsel for

the petitioner submits that the case of the petitioner for grant of relief prayed by him is squarely covered under the judgment dated 24.02.2022 delivered in **CWP No.6628/2021** titled as **Anil Kumar Goel vs. The Himachal Pradesh Tourism Development and anr.** decided on 24.02.2022 which reads as under:-

- “4. While disposing of Review Petition No.110 of 2021 on 25.11.2021, preferred against the order dated 09.11.2021 passed in CWP No.6928 of 2021, in which, the aforesaid order dated 25.08.2021 passed in CWP No.4377 of 2021 was relied upon, this Court has clarified the aforesaid order in the terms that the respondent-Corporation shall be liable to pay entire retiral dues of the petitioner, including gratuity, arrears of pension and leave encashment alongwith prescribed rate of interest, within a period of six months from the due date till the actual payment is made.
5. We are, therefore, persuaded to dispose of these writ petitions ***with a direction to the respondents to pay gratuity and leave encashment to the petitioners with actual rate of interest as per applicable rules, till the time of actual payment, which shall be paid to them*** within a period of six months from

today. The due amount of payment, if delayed beyond six months, shall be paid with interest to the rate of 9% per annum till the date of its actual payment. The writ petitions stand disposed of in the above terms, so also the pending miscellaneous application(s), if any.”

8. Alternatively, the learned counsel for the petitioner submits that consequent upon, the amendment to the Payment of Gratuity Act (vide Amendment Act No. 12 of 2018) notified on 11.04.2018, the maximum amount of Gratuity was enhanced from Rs.10,00,000/- (Rupees Ten Lakhs) to Rs.20,00,000/- (Rupees Twenty Lakhs); and the petitioner, having retired from service of Respondent-Corporation on 31.03.2022, is entitled to admissible amount out of the Enhanced Revised-Gratuity, but the action of the Respondents in releasing a sum of Rs. 1,00,000/- (Rupees One Lakh Only) or such like amount is illegal and the petitioner is entitled to statutory interest on such Revised Gratuity under Section 7(3A) of the Payment of Gratuity Act, to the petitioner till day.

9. In order to substantiate the submissions made in Para 6 (*supra*), the learned counsel for the petitioner places reliance on the judgment passed by Division Bench of this Court in **CWP No.2740 of 2022**, titled as **Mudit Kumar Versus Himachal Pradesh Tourism Development Corporation**, decided on 30.12.2022 along with connected matters, which reads as under:-

“3. The respondent has filed its reply, wherein it has not denied the entitlement of the petitioner(s) to the reliefs, as sought for, and the only ground taken for not granting the benefit to the petitioner(s) is contained in para-4 of the reply, which reads as under:-

That the petitioner is entitled to the *higher amount of gratuity as per payment of Gratuity Act. 1972 amended on 29.3.2018 by the Govt. of India, published in the Gazette of India (Annexure R-2)*. But the petitioner despite of being entitled cannot be granted the financial benefit exceeding the limit of Rs. 10.00,000/- because of the fact that the competent authority of the Respondent corporation ie. Board of Directors (BOD) in its meeting held on 29.11.2019 vide agenda item No. 154.7 that due to poor financial health of the HPTDC the item agenda has been deferred till the resources of the corporation allow to bear the expenditure (Annexure R-3). Hence, the financial benefits exceeding the capping of Rs. 10.00.000/- as per payment of Gratuity Act, 1972 amended on 29.3.2018 referred

above can be given to the petitioner along with other similarly situated retirees only in case the same will be approved by the competent authority i.e. Board of Directors (BOD) of the respondent corporation as per availability of funds in future. It is further submitted that respondent corporation is a semi Govt. commercial organization where, the benefits like revised pay scale from time to time at par with the Govt. Departments are being released to the eligible employees of the HPTDC, only after the prior approval of the competent authority i.e. Board of Directors. It is pertinent to mention here that, the matter with respect of revised pay scale was placed before the Board of Directors of HPTDC. in its meeting held on 5.9.2022 for granting of above benefits to the eligible employees of the Respondent corporation. It is. also submitted that *as & when the Board of Directors of the Respondent Corporation approves the adoption of revised pay scale effective from 1.1.2016 onward at par with the Himachal Pradesh Govt. Departments in HPTDC. the balance amount of Leave encashment, if any as per these pay scales will be calculated and released to the petitioner as per availabilities of the funds.*"

4. *Once the respondent accedes to the entitlement and eligibility of the petitioner(s) for grant of relief of revised gratuity, obviously, the mere fact that the same could not be placed before the competent authority, i.e. the Board of Directors, can be no ground to deny such benefit to the petitioner(s).*
5. Accordingly, we deem it proper to dispose of these petitions ***by directing the respondent to release the revised higher amount of gratuity and leave encashment. in favour of the petitioner(s), in terms of the Revised Pay Rules as well as Payment of Gratuity (Amendment) Act. 2018,***

within a period of three months from today, failing which the respondent shall be liable to pay interest @ 9% per annum, from the date of filing of the petition, till its realization in favour of the petitioner(s). The pending application(s), if any, are also disposed of.”

10. So far as the claim for Revised Leave Encashment is concerned, once the revised pay has been decided to be released, therefore, based on such revised pay, the petitioner is entitled to Revised Leave Encashment in terms of mandate of this Court in **CWP No.7359 of 2021**, titled as **Amita Gupta Versus State of H.P. & ors.**, decided on 01.12.2022.

11. In the background of the submissions made in Para 3 to 8 (*supra*), the learned counsel for the petitioner submits that the petitioner would be satisfied, in case, a direction is issued to the respondents/competent authority to consider/examine the case of the petitioner for redressal of grievances, raised by him in the instant petition (for releasing the admissible amount of Revised Enhanced Gratuity and Revised Leave Encashment) in the light of the aforesaid judgments, within a time bound

schedule.

12. The prayer being innocuous, is not opposed by Ms. Shilpa Sood, learned counsel for the Respondent-Corporation, on facts as well as in law.

13. Having regard to the submissions made by learned counsel for the parties, the writ petition is disposed of by directing the respondents-competent authority to consider/examine the case of the petitioner, for release of admissible amount of Revised-Enhanced Gratuity and Revised Leave Encashment in the light of the judgments in case of **Anil Kumar Goel, Mudit Kumar and Amita Gupta** (*supra*), in accordance with law, within four months from today.

14. Upon consideration, since the respondents are directed to release, the benefits of legal entitlements of Revised Gratuity and Revised Leave Encashment which became due and payable on retirement withheld arbitrarily, but were delayed till day. In addition thereto, the Respondent-Corporation shall release the statutory

interest admissible, under the Statute or Rules or Orders issued thereunder to the petitioner from the due date till actual realization of aforesaid benefits [i.e. as is admissible on GPF under Rule 65 of CCS (Pension) Rules i.e. 7.1 per annum or interest admissible on long term deposits under Section 7(3A) of Payment of Gratuity Act i.e. 6.75% per annum]. Further, the respondents shall release similar rate of interest @ 6% per annum or Revised Leave Encashment, from due date (i.e. expiry of those months from the date of notification of revised pay scale by the Respondents-Corporation, till its realization, to the petitioner, within four months from today; failing which, the Respondents, shall be liable to pay interest @ 9% per annum from due date till realization.

In aforesaid terms, the writ petition as well as the pending miscellaneous application(s), if any, shall also stand disposed of, accordingly.

(Ranjan Sharma)
Judge

February 29, 2024
(Shivender)