

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

CWP No. 10018 of 2023

Decided on: 29th February, 2024

Sh. Chaman 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 as Sr. Accountant 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 arrear of salary + Dearness Allowance w.e.f. 01.01.2016 till 31.03.2022, as per the re-fixation order issued by the respondent as per Annexure P-2, in favour of the petitioner on the basis of re-fixation of higher pay in terms of revision of jpay scales w.e.f. 01.01.2016 in accordance with law alongwith interest @ 9% per annum from due date till the date of its realization on account of the delayed period payment.

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 50% balance payable amount of interim relief in favour of the petitioner alongwith interest @ 9% per annum on account of the delayed period payment, in the interest of law and justice.”

3. The petitioner was appointed as Accounts Clerk in the Respondent-Corporation on 27.09.1985 at Shimla. After rendering an unblemished services, the petitioner retired, on attaining the age of superannuation on 31.03.2022, after rendering about 37 years of service in the Corporation. Post retirement, the *first prayer* of the petitioner is that based on Government Notification dated 03.01.2022, the Respondent-Corporation issued an order

on 26.09.2022, granting the revised pay scales to the employees of the Corporation w.e.f. 01.01.2016, including the Dearness Allowance as made applicable from time to time and arrears accruing therefrom have not been released till day; the *second prayer* [made orally] by Mr. O.P. Goel, learned for the petitioner, is that consequent upon the revision of pay scales [on 26.09.2022, Annexure P-2], the Revised Gratuity and Revised Leave Encashment has neither been sanctioned nor released to the petitioner and the rightful dues, have been withheld or release is being delayed without any fault attributed to the petitioner, for which the petitioner is entitled to interest from due date till actual realization.

In the above background, the petitioner is praying for; (i) release of revised pay arrears and dearness allowance w.e.f. 01.01.2016 till superannuation on 31.03.2022; and (ii) interest @ 9% per annum for delayed release of benefits from due date till realization.

4. At this stage, Mr. Om Prakash Goel, learned

counsel for the petitioner submits that consequent upon the entitlement and admissibility of revised pay scale, the petitioner shall also be entitled to the revised retiral benefits (i.e. revised gratuity and revised leave encashment from the due date of retirement).

5. Ms. Shilpa Sood, learned Standing Counsel for the respondent, does not dispute the entitlement of the petitioner for arrear of revised pay scale and Dearness Allowance thereon. However, she submits that the petitioner has not prayed for grant of revised gratuity and revised leave encashment in terms of the Notifications issued by the State Government which have been adopted and made applicable to the employees of the Corporation in the instant petition. However, she submits that submission so put forth is that the financial condition of the Corporation is not in good humour as on day and therefore, the admissible revised benefits as referred to above, cannot be granted to the petitioner in lump-sum.

6. The above plea so taken by the Standing Counsel for the Corporation, in considered view of this Court is not tenable in law, for the reason, that once the petitioner has served the Respondent-Corporation then, the petitioner has acquired a legal and vested right in law [based on relevant Act, Rules and Office Memorandums issued thereunder to receive the benefits of revised pay-salary including arrears; the revised gratuity and revised leave encashment. These legal entitlements come within the ambit of “Property under Article 300 A of the Constitution of India” and that being so, the respondents cannot wither withhold or delay the timely release of these legal entitlements, except in accordance with law.

7. Notably, the revised retiral benefits can only be denied to the petitioner-employee, in case there is any criminal prosecution or disciplinary proceedings against the petitioner as on the date of his/her retirement. It is not the case of the Respondent-Corporation that such rider or embargo exists on the petitioner. In this view of

the matter the plea so taken, though verbally on instructions of the Corporation, is not at all tenable in Law as well as facts.

8. While dealing with the similar situation in **CWP No.2473 of 2022**, titled as **Sh. Salig Ram Chauhan versus Himachal Pradesh Horticulture Produce Marketing and Processing Corporation Ltd and another**, decided on 04.07.2023, (Annexure P-4), has mandated the respondents to release the revised pay arrears, by directing the respondents to release the revised pay arrears w.e.f. 01.01.2016 to the petitioners by following the same analogy this Court directs the Respondent-Corporation to release the arrears of revised pay and Dearness Allowance to the petitioner within six months from today as agreed between the parties, failing with the Respondent-Corporation shall pay interest at the rate of 9% per annum from the due date till actual payment.

9. So far as the claim for Revised Leave

Encashment and Gratuity is concerned, this Court has relies upon a judgment passed in **CWP No.9377 of 2023**, titled as **Rakesh Agnihotri versus HPTDC and others**, decided on 15.12.2023, has mandate the Respondent-Corporation to release the admissible Revised Leave Encashment and Enhanced Revised Gratuity along with interest as under:-

“6. Learned counsel for the petitioner further submits that the non release/withholding of Revised Enhanced Gratuity, has resulted in depriving the petitioner of the statutory interest from the due date till realization under Rule 65 of the CCS (Pension) Rules @ 7.1% per annum also.

7. In the above background, learned counsel for the petitioner submitted 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 24.2.2022 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. Learned counsel for the petitioner

alternatively submits that consequent upon the amendment to the *Payment of Gratuity Act* (*vide Amendment Act No. 12 of 2018*) notified on 11.4.2018, the maximum amount of Gratuity of Rs.10,00,000/- (Rupees Ten Lakhs) was enhanced to Rs.20,00,000/- (Rupees Twenty Lakhs); and the petitioner, who retired from service of the Respondent-Corporation on 31.08.2021 is entitled for Enhanced Gratuity but the action of the Respondents in not releasing the admissible amount of Rs.17,82,415/- or such like amount and admissible interest under Section 7(3A) of the Payment of Gratuity Act, to the petitioner till day is illegal.

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 H.P.T.D.C**, decided on 30.12.2022 alongwith 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. While dealing with the issue regarding the claim for Revised Leave Encashment based on the revision of pay revised pay as per Office Memorandum dated 03.01.2022 w.e.f. 01.01.2016 [in case of State

Government Employees], the Division bench of this Court in **CWP No.7359 of 2021**, titled as **Amita Gupta Versus State of H.P. & ors.**, decided on 01.12.2022, has held that the revised pay admissible on retirement shall be treated as the 'last pay drawn' for the purpose of calculating the leave encashment of an employee. On this analogy, once the Respondent-Corporation has issued a communication on 26.09.2022 [Annexure P-1] adopting the Office Memorandum dated 03.01.2022 issued by the State Government then, the Respondent-Corporation is bound to release the Revised Leave Encashment to the petitioner, in case not already released.

11. Now, the issue remains as to at what rate of interest is to be granted to the petitioner-employee in case the retiral benefits are withheld or delayed by an employer.

12. In this context, so far as, the interest on *Revised Pension is concerned*, Enhanced/Revised Gratuity is concerned admissible under the Payment of Gratuity

Act [as amended in 2018] enhancing the maximum admissible amount of Gratuity from 10 Lakh to 20 Lakh, 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 on admissible amount of gratuity* 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).

13. In the background of the discussions made in Paras 3 to 12 (*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 (i) releasing the arrears of revised pay along with Dearness Allowance w.e.f. 01.01.2016 to 31.03.2022 and Interest thereon and (ii) the admissible amount of Revised Enhanced Gratuity and Revised Leave Encashment), [if not already released] along with interest in the light of the aforesaid judgments, within a time bound schedule.

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

15. 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 (i) admissible Arrear of Revised Pay and Dearness Allowance and (ii) the Revised-Enhanced Gratuity and Revised Leave Encashment, if not already released, 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.

16. Upon consideration, in case the Respondent-Corporation decides to release the aforesaid legal entitlements Revised Pay, Revised Gratuity and Revised Leave Encashment, which became due and payable on retirement; but was either withheld or delayed, therefore, in these circumstances, the Respondent-Corporation is directed to 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 on admissible amount of gratuity* under Section 7(3A) of Payment of Gratuity Act i.e. 6.75% per annum]. Further, the respondents are also directed to 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)