

# **Nand Lal vs Indian Telephone Industries Limited ... on 9 March, 2018**

**Author: Siddharth**

**Bench: Siddharth**

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Case :- WRIT - A No. - 31490 of 2016

Petitioner :- Nand Lal

Respondent :- Indian Telephone Industries Limited And 2 Others

Counsel for Petitioner :- Kunwar Mayank Singh,Ashok Srivastava

Counsel for Respondent :- Gopal Misra,Chandra Prakash Yadav

Hon'ble Siddharth,J.

Heard Shri Ashok Srivastava, learned counsel for the petitioner, Shri Gopal Mishra, learned counsel for the respondent nos. 1,2 and 3 and Shri Chandra Prakash Yadav, learned counsel for the respondent no. 4.

Petitioner has filed this petition praying for payment of interest on the current market rate on the amount paid to the petitioner by the respondent towards privilege leave encashment of Rs. 2,87,090/- from the date of the retirement of the petitioner i.e., 29.2.2012 till the actual payment of the said amount i.e., 23.12.2015.

The case of the petitioner is that he has retired from service of respondent no.2, Indian Telephone Industries Limited(Naini Unit), Allahabad on 29.2.2012 from the post of Engineer Grade-III. After retirement he was paid his retiral benefits, however, amount towards privilege leave encashment was not paid to him and was only paid on 23.12.2015. He has filed this petition praying for payment of interest on the delay in payment of his privilege encashment amount.

Shri Gopal Mishra, learned counsel for the respondent nos. 1,2 and 3 has stated that all the post retiral dues of the petitioner have been paid and only some delay occurred in payment of privilege leave encashment for which he has prayed for payment of interest for the period of delay for making payment. He has further argued that Naini Unit of Allahabad is under direct control of Ministry of Telecommunication Government of India having its registered and Corporate Office at Bangalore.

The Naini Unit of telephone industries is running in loss and the Government of India has approved some funds for revival of various units of the Indian Telephone Industries, including one unit of Naini, Allahabad and funds have been sanctioned by the Co-operative Office to Naini Unit in phased manner. The Naini Unit at Allahabad in making payment of retiral dues of the employees and other employees have not been paid their salary. Petitioner has already been paid his post retiral dues.

Learned counsel for the respondents states that delay which has occurred in payment of privilege leave encashment is beyond the control of the respondent no.2 and, therefore, liability of interest cannot be saddled on the respondent regarding interest on delayed payment of privilege leave encashment.

Shri Chandra Prakash Yadav, learned counsel for the respondent no.4, Union of India through its Secretary, Ministry of Telephone Industries, New Delhi stated that liability of the payment of interest being claimed by the petitioner lies upon respondent nos. 1,2 and 3 and respondent no.4 has no concern with the same since respondent nos. 1 and 2 are autonomous bodies and they are required to meet their liabilities by own resources.

After consideration of rival submissions it is clear that there is no denial of the fact that there was delay in the payment of privilege leave encashment of the petitioner on behalf of the respondent no.2.

Learned counsel for the petitioner has argued that payment of privilege leave encashment to the petitioner will not absolve the respondent nos. 1 and 2 of the liability to pay interest for delay in payment of the same and has relied upon the judgment of this court in the case of Shiv Shankar Mishra Vs. State of U.P. and others, 2015(3) ADJ, 302(D.B.) wherein this court has held as follows:-

The present case is an unfortunate instance where an employee has been left in the lurch after having rendered long years of service. Both the arrears on account of salary as well as pensionary dues have not been paid on time. When the appellant had moved a writ petition before the Court, an order was passed on 11 September 2013 directing the payment of the admitted arrears within four months and for immediate steps to determine the pensionary dues. This order was not complied with following

which, he was constrained to file contempt proceedings. It is only thereafter that on 18 March 2014 the payment of arrears of salary from August 2010 until February 2013 was made. It was only then that the appellant was also paid arrears on account of gratuity, pension and other retiral dues. There was no reason or justification to withhold the payment of salary during the period when the appellant had worked when salary fell due for payment or for the non payment of pensionary and retiral dues, the latter within a reasonable period of retirement. There was no lapse on the part of the appellant. The paucity of funds cannot surely be held up as an excuse not to pay the salary of an employee who had worked for the period for which his salary is due. Similarly, pensionary dues constitute a rightful entitlement of an employee. The State cannot be heard to say that it would fail to pay the pension on time and yet excuse itself from the liability to pay interest."

He has further relied upon paragraphs 5 and 6 of the judgment in Writ -A No. 27715 of 2006, Smt. Raja Rani Jha Vs. State of U.P.

5. When retiral dues are paid belatedly and delay is without any just cause or reason, attributable to retired employee, loss incurred by him in getting his dues late, need be compensated by awarding appropriate compensation. This Court in Shamal Chand Tiwari Vs. State of U.P. & Ors. (Writ Petition No.34804 of 2004) decided on 6.12.2005 held:

"Now the question comes about entitlement of the petitioner for interest on delayed payment of retiral benefits. Since the date of retirement is known to the respondents well in advance, there is no reason for them not to make arrangement for payment of retiral benefits to the petitioner well in advance so that as soon as the employee retires, his retiral benefits are paid on the date of retirement or within reasonable time thereafter. Inaction and inordinate delay in payment of retiral benefits is nothing but culpable delay warranting liability of interest on such dues. In the case of State of Kerala and others Vs. M. Padmnanaban Nair, 1985 (1) SLR-750, the Hon'ble Supreme Court has held as follows:

"Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following months. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasized and it would not be unreasonable to direct that the liability to pay panel interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."

In this view of the matter, this Court is of the view that the claim of the petitioner for interest on the delayed payment of retiral benefits has to be sustained."

"6. It has been followed and reiterated in O.P. Gupta Vs. Union of India and others, (1987) 4 SCC 328; R. Kapur Vs. Director of Inspection, (1994) 6 SCC 589; S.R. Bhanrate Vs. Union of India and others, AIR 1997 SC 27; Dr. Uma Agarwal Vs. State of U.P. & another, (1999) 3 SCC 438, and S.K. Dua Vs. State of Haryana and another, (2008) 3 SCC 44."

Against the argument of the learned counsel for the respondent nos. 1,2 and 3 the counsel for the petitioner has argued that paucity of funds cannot be a ground for denying the payment of interest on post retiral dues.

Reliance has been placed in the judgment of S.K. Dua Vs. State of Haryana and another 2008(3) SCC 44 wherein paragraph- 14 is as follows.

"14. 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 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 case of D.D. Tiwari (Dead) through Legal Representatives Vs. Uttar Haryana Bijli Vitran Nigam Limited and others, (2014) 8 SCC, 894, it has been held, "8. 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."

In the Writ-A No. 34804 of 2004, Samal Chandra Tiwari Vs. State of U.P. this court has held in paragraph -18 regarding payment of interest as follows

18. Now the question comes about entitlement of the petitioner for interest on delayed payment of retiral benefits. Since the date of retirement is known to the respondents well in advance, there is no reason for them not to make arrangement for payment of retiral benefits to the petitioner well in

advance so that as soon as the employee retires, his retiral benefits are paid on the date of retirement or within reasonable time thereafter. Inaction and inordinate delay in payment of retiral benefits is nothing but culpable delay warranting liability of interest on such dues. In the case of State of Karla and Ors. v. M. Padmanabhan Nair 1985 (1) SLR 750, the Hon'ble Supreme Court has held as follows :

Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed atleast a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following months. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasized and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

In view of the above legal position emerging from the decisions of this Court and Apex Court, the liability of payment of interest on delayed payment of previlage leave encashment cannot be denied. Therefore, direction is issued to the respondent nos. 1 and 2 to make arrangement for payment of interest on the previlage leave encashment of the petitioner from the date of retirement i.e., 29.2.2012 to the date of actual payment within a period of three months from the date of presentation of certified copy of this before all the respondents concerned. The interest shall be paid @ 8.65% simple interest . It is made clear that in case respondent nos. 1 and 2 are not able to arrange necessary funds for payment of interest to the petitioner, respondent no.4 would be required to release the necessary amount for payment of dues aforesaid on the request of respondent nos. 1 and 2 within the same period.

Order Date :- 9.3.2018 Aks