



CIVIL APPEAL NOS. OF 2025
(Arising out of SLP(C)No. 21625/2025)

VERSUS

JUDGMENT

Leave granted.

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Rs.1,56,187/- (penal house rent) and Rs.1,46,466/- (excess payment of salary), was allowed. The said writ petition also accepted the respondent's prayer for payment of interest on the delayed payment of pension and gratuity.

3. The facts lie in a narrow compass. The respondent was recruited into the services of the State in the year 1980. During his service, he was posted at various positions. In the year 2009, the State brought in the M.P. Revision of Pay Rules, 2009 according to which his pay stood revised by order dated 14th December 2011. He superannuated from service on 30th June 2013. However, neither was his pension sanctioned nor was the payment of retiral dues made. The appellant passed an amendment order dated 23rd January 2014 which quashed the order dated 14th December 2011 through which the pay revision was undertaken and, his salary was relegated to the lower scale. Such action was challenged by way of Writ Petition No.5201 of 2014 by the Respondent, the effect of which was that the re-fixation of salary by the latter order was withdrawn by order dated 23rd July 2014. Consequently, the said writ petition was withdrawn. The dispute over retiral dues did not end there.

4. Even after the order of re-fixation of salary was withdrawn, the amounts were not paid. This time on account of the respondent having not vacated the official residence. He eventually vacated such residence on 31st August 2015. At this point in time, no

payments had been made to him. On 10th February 2016, finally the payment of gratuity and pension amount was carried out however the two amounts noted in para 2 were deducted therefrom.

5. Having withdrawn his earlier Writ Petition in view of intervening developments, the writ petition which gave rise to the present proceedings came to be filed. The learned Single Judge allowed the writ petition observing that the entire amount of pension and gratuity could not have been withheld on account of there being an order for recovery. It was held that since the amounts were not paid to him forthwith on his retirement, the appellants could not have charged him for illegal occupation of his government residential premises. Support for such a view was drawn from ***HK Saxena (Dr.) v. Dr. Harisingh Gour Vishwavidyalaya and Anr.***¹. The recovery of the amount was thus held illegal, and the appellants were also directed to pay 6% interest on the total amount to be refunded to the respondent as also 6% interest on the amount of pension and gratuity paid to him from the date of superannuation till payment. The same was directed to be done within a period of three months.

¹ (2004) 1 MPLJ 69

6. On appeal, the learned Division Bench observed that no error could be found in the order of the learned Single Judge and accordingly, the writ appeal was dismissed.

7. We have heard the learned counsel for the parties. The short question for our consideration in this appeal is whether on account of failure to vacate government residence upon superannuation is a valid justification for withholding the payment of retiral dues/pension.

8. It has long been held that the payment of retiral dues/gratuity/pension is not a matter of bounty but in fact a matter of right of every employee, should there be some rule or statute from where the right may originate. *[See: PEPSU RTC v. Mangal Singh*² *and U.P. Roadways Retired Officials & Officers Assn. v. State of U.P.*³]

9. This makes it clear that the Courts below were correct in holding that there was no justification for the appellants having not paid the dues rightly belonging to the respondent to him even after the passage of almost three years after the retirement. We may also observe that there was no occasion whatsoever for the Appellant to have conducted re-fixation of pay after retirement of the Respondent and then proceed to recover the excess amount

² (2011) 11 SCC 702

³ (2024) 9 SCC 331

from the retiral dues payable to the latter. This is a well-settled position in law. A Bench of 3 learned Judges in *Syed Abdul Qadir v. State of Bihar*⁴, held as follows:

“57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram v. State of Haryana* [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] , *Shyam Babu Verma v. Union of India* [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121] , *Union of India v. M. Bhaskar* [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] , *V. Gangaram v. Director* [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652] , *Col. B.J. Akkara (Retd.) v. Govt. of India* [(2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529] , *Purshottam Lal Das v. State of Bihar* [(2006) 11 SCC 492 : (2007) 1 SCC (L&S) 508] , *Punjab National Bank v. Manjeet Singh* [(2006) 8 SCC 647 : (2007) 1 SCC (L&S) 16] and *Bihar SEB v. Bijay Bhadur* [(2000) 10 SCC 99 : 2000 SCC (L&S) 394] .

(emphasis supplied)

⁴ (2009) 3 SCC 475

59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. ...”

The exceptional scenarios provided in the judgment extracted *supra* undoubtedly are not of application in the present case.

10. Insofar as the Appellants position that failure to vacate is the reason that retiral dues were not being granted to him, we fail to see the nexus between these two aspects. In the counter affidavit before the High Court, the Appellants put their position on record as thus:

“3. That the petitioner has been directed to vacate the government residential house allotted to him vide office letter No. 571/EsttRMS/14, Indore dated 26.06.14 annexure R/2 so that the Department may issue a certificate of vacancy of the government residential house to the petitioner and the petitioner can get pension etc. but petitioner is not getting the government residential house and is maintaining his possession unauthorizedly and is also not paying the licence fee of the residential house, hence the appeal of the petitioner is liable to be dismissed with costs.

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6. That, in order to receive the pension amount as per the instructions given in the pension payment order No. 140501280 dated 23.09.14 issued by the divisional pension officer, who passed the Department of Housing estate has written a letter No. 593/ EsttRMS/15, Indore, dated 27.3.2015 annexure R/5 to the petitioner for issuing the certificate of vacancy of the government residential house, but the residential house was not vacated by the petitioner till date, nor the licence fee amount was deposited in the government treasury, hence the petitioner himself is

responsible for not getting the pension EDC., therefore the petition filed by the petitioner is dismissible at the cost”

11. In essence, what the Appellants did before the High Court was to blame the Respondent for the delay in him receiving benefits rightly owed to him. We cannot accept this position. Pension and other retiral dues are benefits that have been earned by an employee due to the service rendered to the institution paying the pension/other retirement benefits. The grant of a residence corresponds to the position held at the time by such employee. The width of these two aspects is separate and distinct. Pension and retirement benefits accrue from a much wider base as the culmination of all efforts, across employment whereas the latter is only for a limited time, till such a person is holding that position. The latter cannot obstruct or defeat the former. The Appellant cannot be allowed to withhold a duly accrued right on this count.

12. Since the delay is entirely on part of the Appellant, and no reasonable explanation acceptable to law is forthcoming except for the attempt to hold back pensionary benefits as a sword on the Respondent's head for not having vacated his government allotted accommodation, in the facts of this case we see no error in the order of the learned single Judge awarding interest to the Respondent.

13. The appeal is accordingly dismissed. However, there shall be no order as to cost.

Pending application(s) if any, shall stand closed.

.....J.
(SANJAY KAROL)

.....J.
PRASHANT KUMAR MISHRA

New Delhi;
22nd September 2025