

**HIGH COURT OF GUJARAT (D.B.)**

**MERUBHA MAHOBATSINH JHALA**

*Versus*

**DISTRICT DEVELOPMENT OFFICER AND ORS**

**Date of Decision:** 28 August 2012

**Citation:** 2012 LawSuit(Guj) 1258

**Hon'ble Judges:** [D H Waghela](#), [G B Shah](#)

**Case Type:** Letters Patent Appeal; Special Civil Application

**Case No:** 1702 of 2011; 29532 of 2007

**Final Decision:** Application disposed

**Advocates:** [H S Munshaw](#), [Niraj Ashar](#), [R C Jani](#), [Roopal R Patel](#)

**Cases Referred in (+):** 5

**D. H. Waghela, J.**

[1] This Appeal under Clause 15 of the Letters Patent is preferred by the appellant at the ripe old age of 85 years, upon his claim of interest on the delayed payment of pension being rejected by the impugned order dated 30.9.2008 of learned Single Judge of this Court in Special Civil Application No. 29532 of 2007.

[2] There is no dispute about the facts that the appellant had approached this court way back in the year 1989 for securing his right to receive pensionary benefits after his retirement in the year 1988. That petition being Special Civil Application No. 6690 of 1989 was partly allowed by order dated 11.8.2000 with the direction that,

"...Since the petitioner retired in 1988, on his making suitable approach in writing to the concerned authorities (respondents No.1 and 3), within a period of one month, necessary orders in his favour would be passed to enable him to obtain pension within the outer limits of three months from the date of receipt of representation. His pension be fixed from the due date and arrears to be also paid to him. Rule is made absolute to the aforesaid extent. ..."

Admittedly appeal preferred from the above order was dismissed on 12.1.2005. Thereafter the pension was fixed w.e.f. 1.4.2005 and paid regularly, but the

grievance of the appellant was that he was deprived of the pensionary benefits since 1989 and till 1.4.2005. His petition therefor, was dismissed by the impugned judgment mainly on the basis that:

"...Further the claim with regard to interest was rejected in the earlier petition filed by the petitioner and, therefore, the relief claimed by the petitioner cannot be granted."

**[3]** It was vehemently argued by learned counsel Ms. Roopal Patel appearing for the appellant that the aforesaid observation made in the impugned judgment was obviously and absolutely perverse, insofar as no claim of interest was made or rejected in the previous order of this court in Special Civil Application No. 6690 of 1989. She further submitted that the appellant was entitled to interest at a reasonable rate on the delayed payment of arrears of pension, in equity as well as law. She relied upon several judgments of this Court and judgment of the Apex Court in [State of Punjab & Ors v. Manjit Kaur](#), 2005 12 SCC 250 wherein it was observed that since there was unexplained delay in granting retiral benefit, interest is to be paid @ 9%.

**[4]** In [R.P. Kapur v. Union of India](#), 1999 AIR(SC) 3589 a three-Judge Bench of the Supreme Court observed:

"32. ....On account of the long delay and denial of pension and retiral benefits on a wrong interpretation of the Rules, we deem it fit to award 12% interest on all the arrears payable to him on the above basis in respect of pension and all benefits....."

Another three-Judge Bench of the Apex Court in [Dr.Uma Agrawal v. State of U.P.](#), 1999 AIR(SC) 1212 observed:

"6. ....The exercise which was to be completed long before retirement was in fact started long after the petitioner's retirement.

7. Therefore, this is a fit case for awarding interest to the petitioner. We do not think that for the purpose of the computation of interest, the matter should go back. Instead, on the facts of this case, we quantify the interest payable at Rs. 1 lakh and direct that the same shall be paid to the petitioner within two months from today."

In [State of Kerala v. M. Padmanabhan Nair](#), 1985 AIR(SC) 356 the Apex Court observed:

"4. Unfortunately such claim for interest that was allowed in respondent's favour by the District Court and confirmed by the High Court was at the rate of 6 per cent per

annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since the respondent acquiesced in his claim being decreed at 6 per cent by not preferring any cross objections in the High Court it would not be proper for us to enhance the rate to 12 per cent per annum which we were otherwise inclined to grant.

"5. We are also of the view that the State Government is being rightly saddled with a liability for the culpable neglect in the discharge of his duty by the District Treasury Officer who delayed the issuance of the L.P.C, but since the concerned officer had not been impleaded as a party defendant to the suit the Court is unable to hold him liable for the decretal amount. It will however, be for the State Government to consider whether the erring official should or should not be directed to compensate the Government the loss sustained by it by his culpable lapses. Such action if taken would help generate in the officials of the State Government a sense of duty towards the Government under whom they serve as also a sense of accountability to members of the public."

In [O.P. Gupta v. Union of India](#), 1987 AIR(SC) 2257 the Apex Court observed:

"23. Normally, this Court, as a settled practice, has been making direction for payment of interest at 12% on delayed payment of pension....."

In view of the above dicta, it is legally imperative for this Court to award interest on delayed payment of pension and other retiral benefits where the delay is unreasonable and neither explained nor justified.

**[5]** In facts of the present case, undisputably the appellant was deprived of his due retiral pensionary benefits for the period as long as nearly 17 years, in the face of direction dated 11.8.2000 to fix the pension within the outer limits of total four months. No explanation worth the name, much less any satisfactory explanation is tendered by the respondent, or canvassed in the oral arguments to justify such prolonged delay in making payment of pensionary benefits to the appellant. It could however be contended that the liability to pay pension had crystalised only after adjudication and the decision dated 11.8.2000 of this court, and hence payment of interest for the earlier period may not be justified in the peculiar facts of the case. Therefore, the appeal is partly allowed and the impugned judgment is set aside. The appellant is entitled to interest @ 9% per annum for the entire period of delayed payment of pensionary benefit i.e. from 1988 to 2005. However to simplify the calculation of interest, it is ordered that the interest shall be calculated and paid with effect from 1st April, 1989 i.e. from the commencement of next financial year on the accumulated amount of pension for the year ending on 31st March of previous financial

year. The interest shall be accordingly calculated on delayed payment of pension for each of the financial years commencing from 1988-89 till actual date of payment of pension i.e. 01.4.2005. The payment of interest as aforesaid shall be made in the first instance by respondent No.3 within a period of one month. It will be open for respondent No.3 to recover the amount so paid, if need be, from other respondents. In view of this order, the Civil Application does not survive and it is accordingly disposed.

