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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-15069-2019 (O&M)**Date of Decision: 25.07.2025**

Suresh Kumar Sharma (deceased) through LRs

...Petitioner

Vs.

State of Haryana and Ors.

...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSALPresent:- Mr. Dhiraj Chawla, Advocate
for the petitioner

Mr. Suneel Ranga, DAG Haryana

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking direction to respondent to release death-cum-retirement gratuity.

2. The instant petition was filed by Suresh Kumar Sharma who during the pendency of proceeding has passed away. His LR's are on record.

3. On 29.05.2019 the following order was passed:

“In the present writ petition, the grievance of the petitioner is that he retired on 31.03.2004. At the time of his retirement, there was an FIR No.118 dated 13.10.2002 pending against the petitioner. In the said FIR, petitioner was convicted and was sentenced to undergo imprisonment

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for a period of five years along with fine of Rs.5000/- vide order dated 02.11.2013.

Learned counsel for the petitioner argues that after the superannuation on 31.03.2004, the benefits, for which the petitioner was entitled for, were withheld due to the pendency of the said FIR and after the conviction on 02.11.2013, no benefit was released to the petitioner. Against the conviction, the petitioner filed an appeal and the said appeal was allowed in favour of the petitioner on 17.10.2018 (Annexure P-1) and after the acquittal, the petitioner is claiming the benefit, which he is entitled for after his retirement. Learned counsel for the petitioner argues that as the benefits were not being released, petitioner served a legal notice on 04.11.2018 (Annexure P-2) and in reply to the said legal notice (Annexure P-3) on 15.04.2019, the petitioner has been informed that the respondents are likely to prefer an appeal against the order of acquittal and have declined to release the pensionary benefits.

Learned counsel for the petitioner argues that once there are no proceedings, which are pending against the petitioner as of now and there is no impediment in the release of the gratuity, petitioner is entitled for the release of the gratuity as well as release of the regular pension and the action of respondents, according to counsel for the petitioner, in denying the benefit only on the ground that they are in the process of filing the appeal, which is yet to be filed, cannot be sustained.

Notice of motion for 15.10.2019”

4. Mr. Suneel Ranga, Advocate submits that State of Punjab has preferred Criminal Appeal No.903-908/2019 against all the accused including petitioner before Hon'ble Supreme Court. Matter is still

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pending before Hon'ble Supreme Court, thus, gratuity cannot be released to the petitioner.

In support of his contention, learned State counsel relies upon judgment of Hon'ble Supreme Court in '*The Secretary, Local Self Government Department & Ors. Etc. Vs. K. Chandran Etc. 2022 (12) SCC 104*' as well as full Bench judgment of this Court in '*Punjab State Civil Supplies Corporation Limited and others Vs. Pyare Lal*' 2012 SCC OnLine P&H 21595.

5. Learned counsel for the petitioner submits that petitioner has passed away. The alleged offence was not connected with his official duties. The deceased had undergone kidney transplant. He was beneficiary of kidney transplant. His alleged act had no bearing with his official duties. Rule 2.2(c) and 2.2(d) of Punjab Civil Service Rules Volume II are inapplicable, nevertheless, respondent has withheld gratuity of the deceased. The employee is no more, thus, pendency of appeal before Supreme Court has lost its significance. Appeal would abate.

6. I have heard learned counsel for the parties and perused the record.

7. The respondent has withheld gratuity relying upon Rule 2.2(b), 2.2 (c) and 9.14 of Punjab Civil Service Rules as applicable to State of Haryana. Rule 2.2(b) and 2.2 (c) and 9.14 are reproduced as:

Rule. 2.2(b) *The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period*



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and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement: -

Provided that-

(1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment-

- (i) shall not be instituted save with the sanction of the Government;*
- (ii) shall not be in respect of any event which took place more than four years before such institution; and*
- (iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service.*

(3) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution; and-



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The Public Service Commission should be consulted before final orders are passed.

Explanation.—For the purpose of this rule-

- (a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and*
- (b) a judicial proceeding shall be deemed to be instituted-*
 - (i) in the case of a criminal proceeding, on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made; and*
 - (ii) in the case of a civil proceeding, on the date of presentation of the plaint in the court.*

Note:-As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant-General. The amount of the pension withheld under clauses (b) should not ordinarily exceed one-third of pension originally sanctioned, including any amount of pension to be so withheld, regard should be had to the consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance.

2.2(c) (1) Where any departmental or judicial proceeding is instituted under clause (b) of rule 2.2 or where a departmental proceeding is continued under clause (i) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon



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conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately proceeding to the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon.

The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of final orders by the competent authority:

Provided that where Departmental proceedings have been instituted under rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for imposing any of the penalties specified in clauses (i), (ii) and (iv) of rule 5 of the said rules, the payment of gratuity or death-cum-retirement gratuity, as the case may be, shall not be withheld.

(2) Payment of provisional pension made under subclause (1) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Note.-The grant of pension under this rule shall not prejudice the operation of rule 6.4 ibid when final pension is sanctioned upon conclusion of the proceedings.

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Rule 9.14 - Provisional pension where departmental or judicial proceedings may be pending

(1) (a) In respect of Government employee referred to in clause (c) of rule 2.2, the Head of Office shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government employee or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorised by the Accountant-General, Punjab during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government employee until the conclusion of the departmental or judicial proceedings and issue of final order thereon:

Provided that where departmental proceedings have been instituted under rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, for imposing any of the penalties specified in clauses (i), (ii) and (iv) of rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government employee.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government employee upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.



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8. From the perusal of above quoted rules, it is quite evident that in case of pendency of departmental or judicial proceedings gratuity or death-cum-retirement gratuity cannot be released till the conclusion of the proceedings. The petitioner was acquitted by this Court and he has passed away though appeal of the State is pending before Supreme Court.

9. A Coordinate Bench of this Court in the case of ***“Darshan Singh Vs. State of Punjab and Ors.” 2011(3) PLR 584*** while advertng to the question of withholding retiral benefits has held that respondents cannot invoke provisions of Rule 2.2(b) as criminal proceedings filed against the petitioner are totally unrelated to his service. The relevant extracts of the same reads as:-

“3. It is common case of the parties that criminal proceedings were initiated against the petitioner, while he was in service. From the nature of offences mentioned in FIR for which the petitioner has been charged, it is evident that the offences are unrelated to the service of the petitioner. Neither there is any claim of causing loss to the Govt. nor there is any case for service misconduct against the petitioner. Even the suspension was on account of registration of the criminal case. The petitioner stands reinstated; There was no adverse order against the petitioner till the date of his retirement. Rule 2.2 (b) reads as under :-

"2.2) (b) The Government further reserves to themselves the right to withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and right of ordering the recovery from the pension of the whole or part of any pecuniary loss caused to Government. If in a



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departmental or judicial proceedings, the petitioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon reemployment after retirement."

A reading thereof clearly indicates that the disciplinary authority, consequent upon the result of the departmental or judicial proceedings, should record a finding whether the delinquent has committed grave misconduct or negligence during the period of his service including the service rendered upon reemployment after retirement."

4. From the bare reading of above provision, it appears that the Govt. has power to withheld or withdraw pension or order of recovery from the Govt. employee only if, departmental proceedings or criminal proceedings are pending in respect to grave misconduct or negligence and where there is an apprehension of loss caused to the Govt. as a consequence of such misconduct or negligence. In the present case there is no such circumstance nor there is any allegation of causing loss to the Govt. Mere pendency of the criminal proceedings is not sufficient to withhold the retiral benefits of the petitioner in any manner particularly when the judicial proceedings are unrelated to the service misconduct of the petitioner.

5. A similar question of withholding of the retiral benefits came to be considered by a Division Bench of this Court in case of **Manohar Singh v. Punjab State Electricity Board and others reported as 2006 (2) SCT 103**. While considering the mandate of Rule 2.2 (b) it was observed that the right to withhold pension can only be exercised, if, in a departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the service.

6. Since the criminal proceedings are totally unrelated to



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the service misconduct, the respondents are not entitled to invoke provisions of Rule 2.2. (b) of Rules for withholding the pension and other retiral benefits of the petitioner. A similar view has been expressed by this Court in case of Atam Bodh Sharma v. State of Haryana & others reported as 2006(4) SCT 768. As a matter of fact the criminal proceedings in the present case are of such a nature that no action is warranted against the petitioner relating to his employment after his retirement. Such criminal proceedings could only be a ground for initiating action against the Govt. employee, if, he is convicted for the criminal offence during service. Assuming for the sake of an argument that the petitioner is convicted after his retirement for an offence not related to his service misconduct, there is no provision in the rules which may entitle the Govt. to initiate post retiral action against the retired Govt. employee for his conviction for an offence unrelated to the service misconduct.

7. In view of the above circumstances, the impugned order (Annexure P-1) is hereby quashed. The petitioner is entitled to 100% pension including commutation and release of all retiral benefits including gratuity. Since from the reply, it appears that most of the retiral benefits have been paid, the respondents are directed to release all balance retiral benefits of the petitioner, within a period of three months from the date of receipt of a certified copy of this order. Since the retiral benefits have been delayed on account of totally illegal action of the respondents, the petitioner shall be entitled to interest for delayed payments of G.P.F and Gratuity at the statutory rate and for delayed payments of other retiral benefits @ 6%. ”

10. A Full Bench of this Court in ‘**Dr. Ishar Singh Vs. State of Punjab and another**’ 1993 SCC OnLine P&H 49 had occasion to

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advert with question of release of retiral benefits including gratuity. The Court in para 79 has laid down following principles:

“i) The Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State is bound to release 100 per cent pension at the time of superannuation, may be provisional.

(ii) The Government can withhold the gratuity or other retiral benefits except pension or postpone payment of the same during pendency of an enquiry.

(iii) Pension cannot be adversely affected before a finding of guilt is returned.

(iv) The Government can initiate Departmental enquiry after long lapse before retirement, rather there is no limitation for initiating the departmental enquiry from the date of incident before retirement. The delay and the explanation for the same may reasonably be taken note of keeping in view its likelihood to cause prejudice to the delinquent if the enquiry is challenged in appropriate proceedings.

(v) The enquiry proceedings cannot be quashed solely on the ground of long pendency.

(vi) There is no effect of superannuation on the pendency of the enquiry proceedings.

(vii) The recovery of the Government dues can be made from gratuity or other retiral benefits only.”

11. Hon’ble Supreme Court while adverting with similar question in ***K. Chandran (supra)*** has held that appeal is continuation of trial and in case an employee has been convicted and appeal is pending, he cannot be released gratuity/death cum retirement gratuity. The relevant extracts of the judgment reads as:



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“On the conviction in a criminal case for violation of integrity norms in performance of official duties and an appeal pending before the High Court, is the employee still entitled to the release of his death-cum- retirement gratuity (for short “DCRG”) is the moot point arising for consideration in the present appeals. We are, in fact, examining a Full Bench judgment of the Kerala High Court which resolved the conflict of view of the Division Benches and ruled in favour of the employees. The controversy having been set down, the Government of Kerala, which is naturally aggrieved by the decision of the Full Bench is before us on the aforesaid issue.

2. In the main appeal before us, the question of law is the same but the facts differ in the two cases of the two employees.

3.(A) K. Chandran, the respondent in the appeal was working as Village Extension Officer, Noolaphuza. In the course of his employment the Vigilance Department registered a crime under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1998 (hereinafter referred to as “the PC Act”) alleging that he had received Rs 500 as bribe from one K.K. Mohanan. Mr Chandran was suspended from service on 27-10-2006 and was reinstated in service on 1-3-2008. He retired from service on 31-3-2011 on superannuation while working as the General Extension Officer in Wayanad.

4. The Inquiry Commissioner and Special Judge, Kozhikode convicted K. Chandran vide judgment dated 29-7-2011 in CC No. 13 of 2008 and sentenced him to undergo rigorous imprisonment (for short “RI”) for 2 years and a fine of Rs 5000. Aggrieved by the same, K. Chandran filed an appeal before the High Court of Kerala, which was registered as Crl. A. No. 6053 of 2013. The appeal was admitted and the sentence was suspended in the meantime.



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5. *K.Chandran submitted a request before the Accountant General to release his DCRG in 2014. On not receiving a favourable response, he filed an application numbered OA (EKM) No. 104 of 2014 before the Kerala Administrative Tribunal (for short “KAT”), which dismissed his application on 9-12- 2014 on the ground that judicial proceedings had been concluded and K. Chandran had been convicted. The issue which arose pertained to the intent and purport of Rule 3-A of Part III of the Kerala Service Rules (for short “KSR”), which was stated to require the outcome of departmental or judicial proceedings to be concluded for the release of DCRG. Thus, if the criminal case went against K. Chandran, it had to be withheld or otherwise it had to be released. It was opined that K. Chandran being a convict and that too for receiving a bribe, could not claim entitlement to the DCRG and, thus, accepting his application would defeat the very purpose of the Rule.*

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40. *We also believe that it is a very restrictive view to disburse DCRG on account of the proceedings against a pensioner coming to an end, even where a conviction has arisen. This is especially so where the convicted person has availed of the remedy of appeal. An appeal is a continuation of the proceedings in trial and would be, thus, a continuation of judicial proceedings. For example, if no appeal had been filed, can it be said that despite conviction in the criminal case, the State is without authority of forfeiting the DCRG or pension for that matter? If it is not so, as we believe, then the pendency of the appeal cannot disentitle the State from withholding the DCRG, considering that it is a hiatus period within which certain arrangements have to be made which would be dependent on the outcome of the appeal.”*



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12. The Supreme Court in above noted case in Para 29 has considered object of withholding gratuity. Court has found that object of withholding is to recover the amount found due from the delinquent employee or deny in case of dismissal from service. Para 29 is reproduced as below:

“29. We must keep in mind the very objectives of holding back pension or the DCRG. One can be to recover the amounts found due from the delinquent employee of any nature whatsoever after appropriate notice and proceedings. The second eventuality is if an employee is dismissed from service. It can hardly be doubted that in the second eventuality of the dismissal from service the employee would lose all retirement benefits.”

[Emphasis Supplied]

13. A full Bench of this Court in ***Punjab State Civil Supplies Corporation Limited and others Vs. Pyare Lal, 2012 SCC OnLine P&H 21595*** while adverting with Rule 2.2 (c) of Punjab Civil Service Rules (Volume-II) has noticed that gratuity or death cum retirement gratuity and no other retiral benefits can be withheld.

14. The respondent during the course of hearing as well as in the reply has not pleaded that departmental proceedings are pending against the deceased. The only ground of withholding gratuity is that criminal appeal is pending against the deceased before Hon’ble Supreme Court. Concededly the deceased was convicted by trial Court, however acquitted by this Court. It is trite that criminal proceedings cannot continue against a dead person.

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15. The employee in the case in hand has passed away. He was 73 years old at the time of filing of the petition. The petitioner's wife who is 73 years old is stated to be suffering from cancer. She cannot be deprived from right of gratuity on the ground that criminal appeal is pending before Hon'ble Supreme Court especially when employee was acquitted by this Court and he is no more. The petitioner was made to retire without departmental proceedings. He cannot be dismissed even if Hon'ble Supreme Court allows appeal of the State, thus, his case cannot be brought within second eventuality contemplated in Para No. 29 of Supreme Court judgment in ***K. Chandran (supra)***.

16. The respondent has withheld gratuity on the sole ground that criminal proceedings are pending against the deceased. Hon'ble Supreme Court in ***K. Chandran (supra)*** and Full Bench of this Court in ***Dr. Ishar Singh (supra)*** have held that State can withhold gratuity if departmental or criminal proceedings are pending. In ***K. Chandran*** proceedings under PC Act were pending and employee's appeal against conviction was pending. The Court held that appeal is continuation of trial, thus, it cannot be held that trial has concluded. In the case in hand, the petitioner was initially convicted and his conviction stands set aside by this Court. He was embroiled in an offence punishable under Transplantation of Human Organs and Tissues Act, 1994. His kidney was transplanted.

The respondent is relying upon afore-cited rules to withhold gratuity. Rule 9.14 and 2.2(c) stipulate that gratuity would not be released during the pendency of criminal proceedings. Rule 9.14(1)(c)

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mandates “no gratuity shall be paid to the Government employee until the conclusion of the departmental or judicial proceedings and issue of final order thereon”. Rule 2.2(c)(1) provides “but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon”. Both the rules are applicable where departmental or judicial proceeding is instituted under clause (b) of Rule 2.2. Clause (b) of rule 2.2 empowers government to withhold pension if departmental or judicial proceedings culminate in holding the employee guilty of grave mis-conduct or negligence during the period of service. Thus, Rule 2.2(b) is applicable after final adjudication whereas Rule 9.14 and Rule 2.2(c) are interim measures. The proceedings either departmental or criminal which would form underpin to withhold/deny pension and gratuity are contemplated in Rule 2.2(b). Clause (b) of explanation to Rule 2.2(b) clarifies that judicial proceedings may be criminal or civil. Criminal proceedings are deemed to be instituted on the date on which Magistrate takes cognizance on the complaint or police report. The civil proceedings are deemed to be instituted on the date of presentation of the plaint.

Rule 2.2(b) is applicable if employee is held guilty of grave mis-conduct or negligence during the period of his service. It means the alleged act must be conducted during the period of his service. At the first blush, it appears that grave mis-conduct may not be connected with official duty e.g. if offence of murder or rape is committed at home and employee is held guilty, he would be covered by expression grave mis-

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conduct. If an employee during his service is put behind the bars for such an offence, he is likely to be dismissed from service because offence even outside the official duty entailing conviction is treated as mis-conduct. This principle does not seem to be applicable to the petitioner if third proviso to rule 2.2(b) is deeply scrutinized. Proviso 3 of rule 2.2(b) provides that no 'such judicial proceeding' if not instituted while in service shall be instituted in respect of a cause of action which arose more than 4 years before such institution. In sub-rule (3), expressions 'such' preceding 'judicial proceedings' has been used. The expression 'judicial proceedings' has been clarified by Explanation of Rule 2.2(b). Expression 'judicial proceedings' has been used in Rule 2.2(b). The conjoint reading of Rule 2.2(b), its proviso and explanation makes it clear that in case of criminal proceedings, it should be in the Court and Magistrate must have taken cognizance. Proviso 3 of Rule 2.2(b) provides that such proceedings if not initiated while in service, cannot be instituted against a retired person after 4 years from the date of cause of action or date of event. In case, an offence is committed outside the official duty, criminal proceedings are not instituted by department and there cannot be limitation period. If offence of murder/rape is committed, criminal law can be put into motion even after 10 years. There is no limitation period. By envisaging limitation of four years, the Legislature has made it clear that proceedings should be concerned with department. There are many offences which are relating to official duty e.g. embezzlement of funds, theft of official property, mis-use of official duty,

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leakage of secret information etc. Thus, it can be safely concluded that criminal proceedings must be relating to official duty. An offence which is totally unrelated to official duty is not contemplated by Rule 2.2(b). In the instant case, alleged offence was not having bearing with official duties.

17. In the wake of above discussion and findings, this Court is of the considered opinion that petition deserves to be allowed and accordingly allowed.

18. The respondent is directed to release gratuity and regularize pension/family pension within three months from today. The respondent withheld gratuity on account of pending criminal proceedings. In view of findings recorded hereinabove, the respondent was bound to release gratuity on the death of employee especially in the light of the fact that before death he had already earned acquittal. The petitioner claimed gratuity after acquittal, therefore, it appears that he was also of the opinion that gratuity is payable after acquittal. Interest is compensatory in nature. The State has utilized dues of the petitioner. In these circumstances, it would be just, equitable and reasonable if respondent is burdened with interest @ 7.5% per annum from the date of filing petition before this court to date of payment. Ordered accordingly. If the respondent fails to pay amount of gratuity within aforesaid period along with interest, it would be liable to pay additional interest @ 2.5% p.a. from the date of retirement to date of payment.



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19. Pending application(s), if any stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

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Deepak DPA

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No