



2025:DHC:5047-DB



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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19 February 2025

Pronounced on: 1 July 2025

+ W.P.(C) 1941/2025, CM APPLs. 9069/2025 & 9070/2025

UNION OF INDIA THROUGH
MINISTRY OF TOURISM

.....Petitioner

Through: Mr. Gigi C. George, SC with
Mr. Ranjit Kumar, Adv. for UOI

versus

MS. PROMILA SAWHNEY

.....Respondent

Through: Mr. Om Prakash, Mr. Pankaj
Kumar Yadav and Mr. Rajeev Ranjan
Pathak, Advs.

+ W.P.(C) 8244/2024

MRS PROMILA SAWHNEY

.....Petitioner

Through: Mr. Om Prakash, Mr. Pankaj
Kumar Yadav and Mr. Rajeev Ranjan
Pathak, Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Gigi C. George, SC with
Mr. Ranjit Kumar, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT

01.07.2025

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C. HARI SHANKAR, J.

The *lis*

1. The only issue for consideration for us, in these writ petitions, which are directed against judgment dated 27 February 2024, passed by the Central Administrative Tribunal, Principal Bench New Delhi¹, is whether Promila Sawhney², the petitioner in WP (C) 8244/2024 and the respondent in WP (C) 1941/2025, is entitled to interest on the amount of gratuity of US \$ 23,879.94.

2. The entitlement of Promila to gratuity is not really in dispute. Though Mr. Gigi C. George, learned Standing Counsel for the Union of India³, sought to join issue on the very entitlement of Promila to gratuity, prayer b) in the writ petition specifically seeks a declaration that she is not entitled “to *any further relief, including interest and attorney fees, beyond the sanctioned gratuity amount of USD 23,879.94*”. We are clear, therefore, that the writ petition does not challenge Promila’s entitlement to gratuity, and restricts the challenge to her entitlement to interest and attorney fees, as granted by the Tribunal.

3. We, therefore, would be examining Mr. George’s contention that Promila was not entitled to gratuity only as a ground on which to decide whether she would be entitled to interest and attorney fees on

¹ “the Tribunal”, hereinafter

² “Promila”, hereinafter

³ “UOI” hereinafter



2025:DHC:5047-DB



the gratuity which now stands conceded.

Facts, leading up to the impugned judgment

4. As the UOI, through the Ministry of Tourism, was unwilling to release gratuity to Promila with interest, Promila approached the Tribunal by way of OA 1940/2021⁴, seeking that the gratuity due to her be released with interest. By the impugned judgment dated 27 February 2024, the Tribunal has allowed Promila's claim to the extent of grant of simple interest on the Dollar amount of the gratuity, for the period 1 November 2000 to 1 August 2019, at the rate of⁵ 1.5% per annum.

5. The UOI has challenged the decision of the Tribunal to the extent it has awarded any interest to Promila. The contention of the UOI is that Promila is not entitled to interest whatsoever. Promila has challenged the impugned judgment of the Tribunal to the extent of the rate of interest granted to her as well as the date up to which interest has been granted by the Tribunal. She prays that the interest be granted @ 12% per annum with effect from 31 October 2000 till the date of actual payment.

6. The issue in controversy being, thus, limited, we, with the consent of the parties, have heard them on the merits of the dispute, without requiring exchange of pleadings for the present, to ascertain whether any case for issuance of notice is made out.

⁴ **Promila Sawhney v UOI and Ors.**

⁵ “@” hereinafter



7. As already noted, the facts are not in dispute. *Vide* appointment order dated 27 March 1978, the services of Promila, who was earlier appointed as Secretary in the leave vacancy of the earlier incumbent Premalatha Nagraj, were regularised with effect from the date of the appointment order i.e., 27 March 1978. She completed her probation satisfactorily on 27 September 1978, after which she was granted five advance increments by order dated 6 April 1979.

8. Promila continued to serve the UOI in the Government of India Tourist Office, Los Angeles, California, USA⁶, till 11 October 2000, on which date, she tendered a letter of resignation to the Assistant Director/Director in the Tourist Office. By the said letter, she sought to be relieved of her duties with effect from 31 October 2000 and settlement of all her dues. The request was accepted by the UOI, as a result of which the services of Promila stood discontinued with effect from 31 October 2000, as sought by her.

9. Consequent on the severance of her employment with the Tourist Office by resignation, the Tourist Office released, to Promila, only an amount of leave salary of US \$ 3338.01.

10. Promila, therefore, intimated the Tourist Office that she was entitled to be paid gratuity as part of her terminal dues. The Director in the Tourist Office, by letter dated 30 November 2000, sought the opinion of the Director of Audit, Indian Embassy, Washington DC, on Promila's claim. In the said letter, the amount of gratuity which would

⁶ "Tourist Office", hereinafter



2025:DHC:5047-DB



be payable to Promila, in the event of her being entitled thereto, was worked out to US \$ 20663.00.

11. As the UOI had not released any gratuity to her, consequent on the severance of her employment, Promila addressed a representation to the Assistant Director in the Tourist Office on 1 August 2001. By the said letter, she pointed out that she had served in the Tourist Office for 22 years and 7 months and claimed that she was entitled to gratuity of US \$ 23,000.

12. On 7 November 2001, Promila addressed another representation to the Tourist Office, reiterating her claim to gratuity. On receiving the said communication, the Director in the Tourist Office wrote to the Under Secretary, Ministry of Transport on the same day, i.e., 7 November 2001, thus:

“Tel: (213) 380-8855
Fax: (213) 380-6111
Email: goitola@aol.com
<http://www.tourismofindia.com>.

INDIA TOURISM
3550 Wilshire Blvd.,
Suite # 204
CA 90010-2485

Ref. No. Admn1(12)/04

Date: November 07, 2001

The Under Secretary,
Government of India
Transport Bhawan
1, Parliament Street
New Delhi-110001

Re: Payment of gratuity

Respected Sir,

This is regarding an appeal dated November 7, 2001 received from Ms. Promila Sawhney, working as a Secretary in the Govt. of India Tourist Office, Los Angeles, since August 1, 2001.



2025:DHC:5047-DB



Ms. Sawhney had worked in our office as a Secretary w.e.f March 1978 to October, 2000. Due to some family situation and undue circumstances for going through a divorce, and left with a young child. As she did not have any guidance, she had to leave the job.

As per the regulations of the Ministry of Tourism, once a staff has worked over a period of 7 or 10 years, they could be extended gratuity. In previous cases, when other local staff of our office had left the jobs, namely: Mr. Thankachan Varghese, Publicity Assistant in April, 1992; Mr. Ram Kumar Bali, Accountant in November 1989 and Mrs. Anjali Shah, Receptionist in 1990. They were extended gratuity for the tenure of the period they worked.

I am herewith enclosing a copy of the letter dated August 1, 2001 received from Ms. Promila Sawhney, for your kind reference and humble request to look into the matter and help us to resolve the issue.

As Los Angeles is a very expensive city to live in alone by a single parent with a child, it is very difficult to meet the financial difficulties and going through very hard times and no one to help me financially.

Thanking you and with kind regards,

Yours faithfully
Sd/-
(DAMA SUBHASH)
Director”

13. Thus, the Director, by the above communication dated 7 November 2001, impliedly recommended Promila’s claim for gratuity.

14. The Director in the Tourist Office again wrote to the Head of Chancery, Consulate General of India⁷, San Francisco on 26 June 2002, pointing out that Promila’s claim to gratuity had to be settled. The amount of gratuity payable to her was worked out, in the said

⁷ “CGI”, hereinafter



2025:DHC:5047-DB



letter, as US \$ 21,132.69.

15. On 30 June 2002, Promila again wrote to the Director in the Tourist office reiterating her claim to gratuity and pointing out that the amount of gratuity payable to her, worked out, not to US \$ 21,132.69 but to US \$ 23,879.94. This request was reiterated by Promila in her representations dated 10 June 2016, 5 July 2016, 27 December 2016, 21 April 2017, 6 June 2017 and 24 July 2017. As her requests for release of gratuity were not resulting in any fruitful outcome, the Promila addressed a legal notice through counsel to the Assistant Director in the Tourism office on 26 October 2018, whereby she claimed gratuity along with interest and Attorney's fees.

16. It was only at this juncture that, by email dated 2 November 2018, addressed to the Promila's counsel, the Assistant Director informed that Promila's claim for gratuity to the tune of US \$ 23,879.94 had been approved and that the amount would be settled by the Tourist office on immediate basis. The said email reads thus:

"From: India Tourism New York<ny@itonyccom>
Sent: Friday, November 2, 2018 3:43 PM
To: im@gandhinet.com
CC: Psawhney2000@yahoo.com

Subject: Settlement of Gratuity in f/o. Mrs. Promila
Sawhney (former Secretary/ Local Staff – India Tourism,
Los Angeles
Attachments : Letter from IT, New York dated Nov 2, 2018
PDF

To,
Ms. Indra M Gandhi
Counsel
Warner Center



2025:DHC:5047-DB



21550 Oxnard Street, Suit # 660
Woodland Hills, California 91367

Dear Madam,

This has with reference to your letter dated 26th October 2018 relating to the grant of terminal benefit {gratuity} in f/o Ms. Promila Sawhney (former Secretary - local staff) at India Tourism Los Angeles for the period 28th March, 1978 to 31st October, 2000,

In this regard, I would like to inform you about the approval of the competent authority for the settlement of terminal benefit (gratuity) amounting to US \$23,879.94 in f/o Mrs. Promila Sawhney.

The above amount will now be settled by India Tourism, New York through Consulate General of India, San Francisco on immediate basis.

Sincerely,

Sunil Kumar Lal Gond
Assistant Director
India Tourism, New York
Suite # 303
1270, Avenue of the Americas
New York, NY 10020
Tel: 212-586-4901
Toll Free: 1-800-953-9399

17. However, having thus communicated to Promila's counsel that her claim for payment of gratuity had been sanctioned and cleared, the Acting Regional Director in the Tourist office executed a *volte face* and, by the following letter dated 6 December 2018, withdrew the offer to release US \$ 23789.94 to Promila towards her terminal gratuity benefits:

“The Law Firm of Ravi Batra P.C.

The Batra Building
Ravi@ravibatralaw.com



2025:DHC:5047-DB



142, Lexington Ave. December 6, 2018 Fax : 212-545-0967
New York, N.Y 10016
212-545-1993

Via Email: im@gandhinet.com
Indra M. Gandhi, Esq.
21550 Oxnard Street, Suite 660
Woodland Hills, California 91367

Re: Your missive dated 11/30/18 regarding Promila Sawhney's statute of limitations-barred claim from September 5, 2000, albeit, maturing on October 31, 2000 - 18 years ago.

Ms. Gandhi,

— 'The undersigned represents India Tourism Board. Your client's matter, and our demand have been turned over to us for response.

Based purely upon humanitarian grounds, our client was willing to consider inter alia, waiving the statute of limitations-barred claim and possibly "settle" this matter in the best of faith - something you rejected, with gusto and demanded a frivolously enhanced amount. As I am sure you have informed your client, what California's statute of limitations is, and its effect.

Given your untenable position, based upon a barred claim no less, one is left wondering if your client's best interests were served to-date by you - as this letter is now confirming that there is no settlement being offered. Since, we have had to be retained to deal with this stale claim, humanitarian status quo ante is not possible.

We consider the matter closed. If you proceed to court, which is your right, we will assert all of our rights, including, without limitation "frivolity" and S/L bar, and seek the cost and fees of getting it dismissed. If you wish to rehabilitate your advocacy, make us an Offer, which includes a General Release of our client, an unqualified "Thank you," and a settlement amount that is a fraction of your barred-claim, I will review it if received by 12/12/18. Nothing contained herein is an offer to you, and all rights are expressly reserved. ,

Happy Holidays!
Via email: ny@jtonye.com
Sunil Kumar
Acting Regional Director
Incredible India/India Tourism"

Sincerely

Ravi Batra



2025:DHC:5047-DB



18. In these circumstances, Promila approached the Tribunal by way of OA 1940/2021, with the prayer that the UOI be directed to release, to her, gratuity of US \$ 23,879.94 along with interest @ 12% p.a. with effect from 31 October 2000 till the date of actual payment along with costs and legal fees.

19. As is apparent from the prayers in WP(C) 1941/2025, to which we would presently allude, the UOI does not dispute Promila's entitlement to gratuity of US \$ 23,879.94, which was duly sanctioned to her. The dispute is solely with respect to interest.

20. Before the Tribunal, apropos the claim for interest, Promila relied on the judgments of the Supreme Court in *Syed Maqdoom Mohiuddin v Saudagar Anwar*⁸, *Vijay L Mehrotra v State of UP*⁹ and *S.K. Dua v State of Haryana*¹⁰. She submitted that as the UOI had not released, to her, the gratuity to which she was legally entitled, and it was only after 13 years of communications, on being issued a legal notice, that UOI agreed to release her terminal gratuity, she was duly entitled to interest thereon. She submitted that, therefore, she was unwilling to accept gratuity without interest. She also pointed out that she was a single mother and a cancer patient and was in need of her terminal benefits for, among other things, her treatment.

21. Disputing Promila's claim, the UOI advanced, before the Tribunal, preliminary objections with respect to jurisdiction and limitation.

⁸ (1998) 5 SCC 729

⁹ (2001) 9 SCC 687



22. Apropos jurisdiction, it was sought to be contended that, as an American citizen who was employed in the US, Promila had wrongly approached the Tribunal and ought to have pursued claims with the judicial fora in the US.

23. With respect to limitation, it was pointed out that the OA had been filed in 2021, though the severance of Promila's employment with the Tourist office was in October 2000. Promila was, therefore, sleeping over the matter from 2001 to 2017, when she had made her first representation to the UOI, to which the UOI responded on 1 August 2019. In these circumstances, it was submitted that the OA filed by Promila was barred by limitation. Even reckoned from 1 August 2019, it was submitted that Promila ought to have filed her claim within 1 ½ years thereof and that, therefore, her OA was barred by time.

24. In rejoinder, on the aspect of limitation, Promila relied before the Tribunal on the judgment of the Supreme Court in *In re. Cognizance for Extension of Limitation*¹¹.

25. The Tribunal has proceeded to dispose of the OA thus:

“5.1 In the instant case, the short issue is whether the applicant is entitled to get interest on delayed payment of gratuity with effect from 31.10.2000. The applicant is claiming interest on US \$ 23,879.94, which was granted by the respondents as the amount of gratuity payable to the applicant with effect from 31.10.2000. The respondents have offered the payment of gratuity but the applicant has insisted that this gratuity should be accompanied with payment

¹⁰ (2008) 3 SCC 44

¹¹ (2022) 3 SCC 117



of interest and she has not accepted the said offer of gratuity extended vide letter dated 01.08.2019. The admissibility of gratuity to the applicant has not been denied by the respondents. The then Director vide his letter dated 07.11.2001 has requested to the Under Secretary in the Ministry of Tourism, Government of India for settling the gratuity amount of the applicant. It was the duty and responsibility of the respondents to settle the issue regarding payment of gratuity among themselves and they should have released the gratuity amount immediately after the applicant severed her services from the respondents. However, the respondents did not take the issue to logical conclusion in pursuance of letter dated 07.11.2001 by the then Director Tourism. It is also an admitted fact that the applicant did not approach the respondents for release of gratuity amount till 2016 vide letter dated 10.06.2016, giving reference to her earlier letter dated 12.04.2016 followed by another one dated 06.06.2016. From this, it is clear that the applicant never bothered to pursue the matter regarding the outstanding payment of gratuity by the respondents from 2001 to 2016. The applicant in her OA has not given any cogent reason not to approach the appropriate forum, administrative and/or judicial, for nearly 15 years since she took voluntary retirement from the respondents.

5.2 The learned counsel for the respondents has averred that the present OA should be dismissed for want of limitation. However, taking the offer of gratuity vide letter dated 01.12.2019 and taking suo motu order of the Hon'ble Apex Court for deducting Covid period from the period of delay, the OA is within limitation. Moreover, applying the ratio of the Apex Court in ***Union of India and Anr. v Tarsem Singh***¹², the non-payment of pensionary benefits is a continuing wrong and hence the OA should not suffer on account of delay and laches.

5.3 The delay in to the is payment of gratuity applicant on account of the confusion amongst the various authorities belonging to the respondents as well as sleeping over on the matter by the applicant for nearly 15 years. In view of this, one can safely infer that the delay is on account of the respondents as well as the applicant. I tend to put major portion of responsibility on the respondents than the applicant. The facts and circumstances in the instant case are peculiar to this case and quite different from ***Mohiuddin (supra)***, ***Vijay L. Mehrotra (supra)*** and ***S.K. Dua (supra)*** cases decided by the Apex Court. In all those cases, the responsibility of delay in payment of retirement benefits lies with the government authorities. Accordingly, invoking the provisions of Articles 14, 19 and 21, the Apex Court in ***S.K. Dua (supra)*** case

¹² (2008) 8 SCC 648



has directed payment of interest to the petitioner therein for delayed payment of retirement benefits. The order dated 01.07.2021 passed by this Tribunal in *Rinku Prinja v Union of India and Ors.*¹³ case follows from the principle enunciated in previous judgments by the Apex Court in the cases cited above. In absence of any statutory provisions, the basic principles enunciated in Constitution of India are attracted for granting interest to retired payment of retirement benefits. employees for delayed.

5.4 In the present case, as mentioned above, the responsibility for delay is both on the applicant as well as the respondents. As the facts and circumstances of the present case are distinguishable from the cases cited above, a judicious view needs to be taken in the instant case.

5.5 The applicant is claiming interest on delayed payment of gratuity in dollar terms. The dollar has appreciated significantly vis-a-vis the Indian rupee. Moreover, the rate of interest prevailing in USA for various periods since 2002 till date is significantly 16 Item No.14/C-4 different than what was/is OA No.1940/2021 prevailing in India. The interest rate in India is dependent upon the Consumer Price Index prevailing in India, which is significantly different than the inflation which was prevailing in the United States.

5.6 Considering all these facts, I am of the view that the applicant should not claim significant interest on the dollar payment of gratuity, considering the interest rate prevailing in India on Indian rupees. However, considering all the facts and circumstances, I would like to award simple interest of 1.5% on the amount of gratuity payable to the applicant in dollar terms from the date of retirement of the applicant. The respondents are directed to release the gratuity amount to the applicant with simple interest of 1.5% on the dollar amount of gratuity from 01.11.2000 till 01.08.2019 when the respondents offered the gratuity amount to the applicant. This exercise shall be completed within eight weeks from the date of receipt of a certified copy of this order.

The OA is disposed of in the above terms. No costs.”

26. The judgment of the Tribunal is under challenge before us at the instance of both the UOI as well as Promila.

¹³ Judgment Dated 1 July 2021 in OA 1777/2020



Rival Contentions

Submissions of Mr. Gigi C. George for the UOI

27. Mr. George submits, referring to the Appointment Order dated 27 March 1978, whereby the services of Promila were regularised with effect from that date, that she had been appointed by the Tourist Office in the US and that, therefore, she could not maintain an OA before the Tribunal.

28. Mr. George further submits that the communication dated 4 November 1966 from the MEA to the 1st Secretary, Embassy of India, Washington, whereby locally recruited staff in Indian Missions in the US were held to be entitled to gratuity, specifically stated that the entitlement would apply only to employees “having nationalities other than US and Canadian” and further stipulated that gratuity would not be claimed “as a matter of right”. The letter of resignation dated 11 October 2000, addressed by Promila to the Tourist Office, he points out, merely sought settlement of her dues. It did not specifically seek gratuity, much less any interest thereon. Even in her subsequent letter dated 10 June 2016 to the Tourism Office in LA, Promila, while claiming gratuity, did not seek any interest. In such circumstances, Mr. George submits that the Tribunal was in error in granting interest to Promila, ignoring the delay, on her part, in approaching the Tribunal. He further submits that the acceptance, by the UOI, of Promila’s claim to gratuity, was not a manifestation of any right in her, but was on purely humanitarian grounds. That could not further entitle her to interest on the gratuity. In other words, having been



2025:DHC:5047-DB



offered an inch, Mr George submits that Promila was seeking a mile.

Submissions of Mr. Om Prakash, on behalf of Promila

29. Responding to Mr. George's submissions, Mr. Om Prakash, appearing for Promila, submits that no fault can be found with the decision of the Tribunal to award interest, to Promila, on the terminal gratuity payable to her. Interest on delayed payment of terminal benefits, he submits, is a matter of right. He has drawn particular attention to the e-mail dated 1 August 2019 from the UOI, which read thus:

“From: passport.admin@passportindia.gov.in
Date: Aug. 1, 2019 at 11:04 AM
Subject: MADAD GRIEVANCE ID: US6AD104046218
To: PROMRS.1965@gmail.com

Dear Promila Sawhney,

Greetings!

With reference to your Grievance Id: US6AD104046218,
Following action has been taken by Indian Embassy/MEA:

Ms Promila Sawhney has been granted gratuity of USD 23,879.94 has already been approved in favour of Ms Promila Sawhney. However, Ms Sawhney is refusing to take the said amount without interest and Counsel Fees. India New York tourism office has informed the Consulate that *payment of sanction gratuity will be released only if Ms Sawhney agrees to accept the amount without interest and Counsel Fees through a written confirmation to India Tourism, New York.*

Thanking you and assuring you of our best services at all times.

With best regards,

Consular Services”



In view of the aforesaid communication, Mr. Om Prakash submits that Promila's claim to interest on the delayed payment of gratuity could not be defeated on the ground that she had refused to accept the gratuity which was offered to her.

30. Insofar as the aspect of delay is concerned, Mr. Om Prakash submits that the UOI cannot be heard to plead delay against Promila for payment of her terminal gratuity for years, till she was constrained to issue a legal notice to the UOI.

31. There is, therefore, submits Mr. Om Prakash, no merit in the UOI's writ petition. In fact, the Tribunal has erred in directing payment of interest only @ 1.5% p.a., and only till 2018. He submits that Promila would be entitled to a much higher rate of interest, and that the interest should be payable till the release of gratuity with interest to her. He, therefore, presses WP (C) 8244/2024.

Analysis

Re. WP (C) 1941/2025

Re. plea of maintainability of OA 1940/2021

32. We find no substance in Mr. George's contention that OA 1940/2021 was not maintainable before the Tribunal. In fact, the Appointment Order dated 27 March 1978, on which Mr. George places reliance, itself defeats the contention. It specifically concludes



2025:DHC:5047-DB



with the stipulation that Promila’s “leave, salary and service conditions (would) be governed by the Government of India’s orders from time to time.”

33. Besides, Section 14(1)(b)(ii) of the Administrative Tribunals Act, 1985 extends the jurisdiction of the Tribunal to “all service matters concerning a person [not being a member of an All India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or the control of the Government of India or of any corporation or society owned or controlled by the Government”. The grievance of Promila was undisputedly a “service matter”, and this fact is not in question. Promila is, again undisputedly, a “person”. The post of Secretary in the Tourist Office in LA, to which she was appointed, was undisputedly a civil post under the UOI. Her grievance pertained to her service. It was in connection with the affairs of the UOI. She was, therefore, entitled to ventilate her grievance before the Tribunal, which was possessed of the jurisdiction to adjudicate on it.

34. Mr. George’s plea that OA 1940/2021 was not maintainable before the Tribunal is, therefore, misconceived and is accordingly rejected.

On merits, and regarding the plea of delay



35. Mr. George has not advanced any substantial contention by way of challenge to Promila's entitlement to gratuity, following her resignation from the post of Secretary in the Tourist Office. He merely places reliance on the communication dated 4 November 1966 from the MEA to the First Secretary, Indian Embassy, Washington.

36. It is true that the communication dated 4 November 1966 does not extend its benefit to employees of US or Canadian nationality. We have our doubts whether such a condition was constitutionally permissible, if the employee concerned was actually an officer employed by the Indian Government, with a specific stipulation that her service conditions would be governed by orders passed by the Government of India. We need not, however, deliberate further on this point, as the acquisition of US citizenship, by Promila, was after her resignation from the Tourist Office. At the time of her resignation, he was an Indian citizen. Her right to terminal gratuity crystallised on that date. As such, any subsequent acquisition of US citizenship by her would make no difference.

37. We have, however, no doubt in no mind that stipulation (viii) in the letter dated 4 November 1966, which reads "Gratuity will not be claimed as a matter of right" is unconstitutional and unenforceable in law. Constitutional, or even legal, rights, which are statutorily guaranteed, cannot be taken away by an executive instruction. Such a stipulation would also infract Section 28(a)¹⁴ of the Indian Contract

¹⁴ **28. Agreements in restraint of legal proceedings void** – Every agreement,—
(a) by which any party thereto is restricted absolutely from enforcing his rights under or in



Act, 1872, if it is to be read as barring the employee from seeking legal remedies for payment of gratuity due to her, or him.

38. Insofar as the entitlement of Promila to interest, on the terminal gratuity payable to her, is concerned, it is a settled position that terminal benefits, which constitute the means of livelihood of an employee in the evening of her, or his, life, are not a bounty, and have to be paid with all due alacrity. Delay in payment of terminal benefits is unconscionable in law and in fact.¹⁵

39. Promila was, moreover, representing for payment of her terminal gratuity from the time of her resignation in October 2000. A representation, in that regard, was forwarded by the Director in the Tourist Office for the opinion of the Director of Audit, Indian Embassy, Washington DC, on 30 November 2000. That letter also computed the amount of gratuity to which Promila was entitled. Even then, gratuity was not released. Promila had to represent to the Tourist Office and other authorities on 1 August 2001, 7 November 2001, 30 June 2002, 10 June 2016, 5 July 2016, 27 December 2016, 21 April 2017, 6 June 2017 and 24 July 2017. During this period, the Director in the Tourist Office, vide communication dated 7 November 2001 addressed to the Under Secretary, Government of India, Transport Bhawan, New Delhi, recommended Promila's case for payment of gratuity.

respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, or

is void to the extent.

¹⁵ As an aside, we may note that the Supreme Court has also, recently, called upon courts in India, particularly high courts, to expedite and prioritise cases in which payment of terminal benefits are in dispute.



40. Despite this, there was complete silence, from the UOI, with respect to Promila's claim and it was only when Promila addressed the legal notice to the Assistant Director in the Tourism Office on 26 October 2018, that, *vide* email dated 2 November 2018, Promila was informed that her claim to terminal gratuity, of \$ 23,879.94, had been approved. There is not a whisper of a justification for the respondents sitting on Promila's legitimate claim for 18 years.

41. We are also extremely unhappy about the fact that, having thus acknowledged Promila's entitlement to terminal gratuity by the email dated 2 November 2018, the UOI resiled on its assurance *vide* communication dated 6 December 2018, addressed through Counsel. To our mind, this communication was both unsavoury and unjustified. Had the UOI not taken such a stand, Promila would have been saved the time and expense of litigating, first before the Tribunal and thereafter before this Court.

42. Having chosen to belatedly respond to the several communications addressed by Promila for payment of her terminal gratuity, the UOI can obviously not be heard to contend that she was remiss in not approaching the Tribunal before 2018. It was for the first time on 6 December 2018 that the UOI, through Counsel, repudiated Promila's claim. This communication itself granted her a cause of action to approach the Tribunal. Within the period of one and a half years from the date, the COVID-19 pandemic engulfed India, and the Supreme Court, by its decision in *In re. Cognizance for Extension of*



Limitation, extended the period of limitation, to approach Courts, beyond 28 February 2022. Even though it may be argued that this decision would apply only where the normal period of limitation expired prior to 15 March 2020, we, in the circumstances of the present case, and keeping in mind the manner in which the UOI sat on Promila's legitimate claim for 18 years, are not inclined to accept Mr. George's submission of delay.

43. In any event, after the judgment of the Supreme Court in **S.K. Dua**, the issue of entitlement of an employee to interest on delayed payment of terminal benefits is no longer *res integra*. That, in fact, was a case in which, on the date of his superannuation, disciplinary proceedings were pending against S.K. Dua, the appellant before the Supreme Court. Following conclusion of the disciplinary proceedings in his favour, his retiral benefits were released to him but, in the process, four years elapsed. The Supreme Court, in para 14 of the report, upheld the entitlement of S.K. Dua to interest on his retiral benefits, thus:

“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 of 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.”

Conclusion

44. We, therefore, are of the opinion that, to the extent that the Tribunal has allowed Promila’s claim to terminal gratuity with interest, the impugned judgment is unexceptionable. There is, therefore, no substance, whatsoever, in WP (C) 1941/2025, preferred by the UOI.

45. We feel, however, that the issue of whether the Tribunal was justified in restricting payment of interest to Promila till 1 August 2019, and fixing the rate of interest at 1.5% p.a., merits consideration. We say so, because of the communication dated 1 August 2019, whereby the UOI refused to release terminal gratuity to Promila unless she agreed to forgo her claim to interest. The legality of such a condition, as imposed on Promila, to our mind, is seriously disputable. The finding of the Tribunal that the delay in payment of gratuity was owing to confusion which prevailed for 15 years may also be open to debate, in view of the fact that her entitlement to gratuity had been vouchsafed by the Director in the Tourist Office as far back as on 7 November 2001, and, even thereafter, the UOI did not deem it appropriate to respond to any communication addressed by Promila, till she issued a legal notice on 26 October 2018.

46. We, therefore, feel that the issues raised by Promila in WP (C) 8244/2024, deserve consideration.



2025:DHC:5047-DB



47. Before taking a decision in the said writ petition, however, we deem it appropriate to extend, to the UOI, an opportunity to file a formal response, inter alia for the reason that there is no concession, by the UOI, to disposal of WP (C) 8244/2024 solely on the merits of the submissions made at the Bar.

48. Accordingly, we issue notice in WP (C) 8244/2024, to be served on the UOI through Mr. Gigi C. George, learned Standing Counsel, to show cause as to why rule *nisi* be not issued, returnable on 17 September 2025. Counter-affidavit be filed within four weeks with advance copy to learned counsel for Promila, who may file rejoinder thereto, if any, within 4 weeks thereof.

49. Inasmuch as the dispute pertains to interest on retiral benefits, and Promila is the seventh decade of her life, no extension of time for filing counter affidavit and rejoinder shall be granted. The writ petition shall be shown in the supplementary list on the next date of hearing, and would be taken up for disposal. It shall be open to learned Counsel for both sides to place, on record, in addition to their pleadings, short written submissions, not exceeding four pages each, precisely setting out the contentions, with advance copy to learned Counsel for the opposite party, at least a week in advance of the next date of hearing, with a separate copy emailed to the Court Masters.

50. We are not, however, inclined to issue notice in WP (C) 1941/2025 which is, therefore, dismissed *in limine*, with no orders as to costs.



2025:DHC:5047-DB



51. We direct that the terminal gratuity of Promila, along with interest as granted by the Tribunal, be released by the UOI within a period of four weeks from today, and a compliance report be placed on record before this Court before the next date of hearing in WP (C) 8244/2024.

52. This shall, however, remain subject to the outcome of WP (C) 8244/2024.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JULY 1, 2025

Aky/yg

Click here to check corrigendum, if any