

RETIRAL BENEFITS AS A HUMAN RIGHTS

NHRC INITIATIVES



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**NATIONAL HUMAN RIGHTS COMMISSION
INDIA**

**RETIRAL BENEFITS AS A HUMAN RIGHT –
NHRC INITIATIVES**



National Human Rights Commission

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Retiral Benefits as A Human Right –
NHRC Initiatives

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Chairperson NHRC

FOREWORD

This book titled “**Retiral Benefits as a Human Right: NHRC Initiatives**” showcases the pioneering strides of the National Human Rights Commission in the elucidation of retiral benefits as a human right.

Retirement benefits are the accumulated savings of a lifetime of service. Denial, non-payment or delayed payment of the same is not only tantamount to denial of an individual’s rightful property, but is also a violation of the human rights of the victim and their next of kin wherein their livelihood is affected, often times resulting in untold misery, starvation and poverty.

This book not only chronicles the Commission’s exposition of retiral benefits as a human right but also extolls its unique undertakings to alleviate the suffering of innumerable families bereft of their rightful dues, thus leading the nodal agencies of the Indian bureaucratic system towards timely deliverance of retiral dues and benefits.

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I extend my heartfelt thanks to Sh. A.K. Garg, Registrar (Law) and Sh. A.K. Parashar Joint Registrar (Law) & Focal Point for HRDs, who, with their extensive efforts have worked on various aspects of this topic and made this book a reality. I also extend my thanks to Ilavarasi (Intern) and Rohan Agrawal (Intern), who were of immense help for required research on the subject and contributed in finalizing the contents of the book.



New Delhi
10 December 2014

(Justice K.G. Balakrishnan)



PREFACE

The National Human Rights Commission of India is mandated under Section 12(i) of Protection of Human Rights Act, 1993 to protect and promote the human rights of the citizens of this country. The Commission, while spearheading the defense of human rights at every level, has also paved the way for a continuously dynamic interpretation of its scope.

This publication aims at portraying the Commission's interpretation of retiral benefits as a human right and its subsequent efforts to ensure a strong platform of redressal for victims and families suffering from poverty and hardship, upon denial of their hard earned retiral benefits and dues.

(A.K.Parashar)

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PROLOGUE:

One Puttu Lal, a class-IV employee of the Social Welfare Department of Government of Uttar Pradesh, died in service in the year 1979. His 78 year old widow, Ramjilai @ Shanti Devi, complained to the Commission, in 2010, that even after a lapse of 31 years, she had not been paid the retiral benefits of her late husband and family pension. Hence her family was on the verge of starvation, she was not able to solemnize the marriage of her marriageable daughters and so forth. When this fact was brought to the notice of the State Authorities, they put a false and lame excuse forth, that the family had not applied for these benefits¹.

Pension or retirement benefits like Gratuity, leave encashment, provident fund or any other benefit payable at the time of the retirement is to be made on the day of retirement or within a stipulated time period, in case of termination of the contract of employment due to voluntary retirement, retrenchment, layoff etc., to the employees, and in case of death of the employees during the course of employment or in employment, to his nominee or next of kin, within a stipulated or reasonable time period, where it is not stipulated. If not provided within this time period, interest is to be paid on the delayed payments.

The pension or the retiral benefits may be the only source of livelihood and means of survival for them; hence non-payment of these benefits may have devastating effects on their lives. Since it is the question of the very survival of the retired employee or next-of-kin, and / or family members of the deceased employees, if these

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retirement benefits are not paid to them, it violates their human rights.

The retirement benefits may be paid to the employees of the Central Government, as per the provisions of CCS (Pension) Rules; to the employees of the State Government, as per the Rules adopted by the concerned State government; to the employees of CPSUs/SPSUs, run, owned, financed or substantially managed by the Central Government or the State Governments, under the Employment standing Orders adopted by them. However, some employees of the Corporation (Such as Municipal Corporation Delhi, as decided by the Hon'ble Supreme Court of India in the matter of Municipal Corporation of Delhi v. Dharam Prakash Sharma²), and other Public Sector Undertakings may be provided one or other benefit under the Statutes enacted and dealing with the subject, such as Payment of Gratuity Act, 1972, Employees State Insurance Act, 1948, Employee's Compensation Act, 1923, etc. In some of the cases, the Public authorities may be the disbursing authority of pension or the provident fund such as Employees' Provident fund Organisation (EPFO) under the Employees' Provident fund and Miscellaneous Provisions Act, 1948.

The Supreme Court of India in *D.S. Nakara & Others vs. Union of India*³ has made the following observations on right to pension.

“The antiquated notion of pension being a bounty or a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar

& Ors. (1) wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by rules and a Government servant coming within those rules is entitled to claim pension”.

Pension is the deferred portion of compensation for long and devoted services rendered by an employee with the employer. It is a social welfare measure as well. Article 21 of the Constitution of India guarantees everyone a fundamental right to livelihood, which includes entitlement to receive his deferred wages in accordance with rules, after retirement. Non-payment of retiral benefits therefore, is a violation of one’s fundamental right under Article 21. The right to receive the same is not only a fundamental right but is also a right to property under Article 300-A of Constitution of India which cannot be taken away except by Authority of Law.

The Commission, in numerous cases, has observed that there was inordinate delay in the payment of the retirement dues to the employees, by the authorities. In number of cases payments were made even after a lapse of more than three decades, that too after the intervention of the Commission. The perpetrators of these violations came out with untenable excuses for non-payment of the pension and other retirement benefits to the beneficiaries.

CHAPTER-1

INTERNATIONAL COVENANTS AND LAWS

“Should any political party attempt to abolish social security, unemployment insurance, and eliminate labor laws and farm programs, you would not hear of that party again in our political history.”

President Dwight D. Eisenhower

There are number of International Declarations, Conventions or International Instruments and International Laws covering, propagating or making aspects of social security (in general), pension and retiral benefits in particular, a core human rights issue. Therefore, all the states are required to work towards realizing these mandates.

The effects of international law on the legal fabric of the countries of the world are varied and multitudinal. India, however, follows the “dualist” school of law with respect to international laws and covenants⁴. Therefore, international treaties do not translate into national law, as a matter of course. They must be assimilated into the legal system in the form of Parliamentary legislation.

Some of these International Declarations, Instruments, Conventions and Laws are given hereunder:

1) The Universal Declaration of Human Rights (UDHR)⁵

UDHR is a declaration adopted by the United Nations General Assembly on 10th December, 1948 at Paris. The Declaration arose

directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled.

The **preamble** states that, “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

Article 3 reads as, “Everyone has the right to life, liberty and security of person.”

Article 25 (1) states that, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

2) International Covenant on Economic, Social and Cultural Rights (ICESCR)

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27.

Its **Preamble** recognizes that the inherent dignity, the equal and inalienable rights of all members of the human family are considered the foundation of freedom, justice and peace in the world.

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

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Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that: they shall accord the widest possible protection and assistance to the family, the natural and fundamental group or unit of society, for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses [Art. 10(1)]; provide Special protection to mothers during a reasonable period before and after childbirth, paid leave or leave with adequate social security benefits [Art.-10(2)]; All children and young person's be protected without any discrimination for reasons of parentage or other conditions, from economic and social exploitation; their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development[Art.-10(3)].

Article 11

Provides for recognizing the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent [Art.11(1)]; Recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs [Art.11(2)].

Article 12

Provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health [Art.12(1)]; to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness. [Art. 11(2)].

3) International Labour Organization (ILO)

The Conventions 118 and 102 deal with a range of issues, namely, medical care, sickness benefit, maternity benefit, old age benefit, survivor's benefit, employment injury benefits, unemployment benefits and family benefits in the areas of Equality of Treatment and Minimum Standards of Social Security respectively. Specifications and guidelines, based on international research and agreement form the basis of these conventions

Every country that has ratified these conventions will be bound to carry out its own social security program in consonance to the specified conditions. India has ratified the ILO Convention 118 only, not 102.

ILO C118 – Equality of Treatment (Social Security) Convention, 1962

ILO C102-Social Security (Minimum Standards) Convention, 1952

– Part-IV of the Convention and Article 25-30 of it deal with the Old age benefits as under:

Article 25

Each Member for which this Part of this Convention is in force shall secure to the persons protected the provision of old-age benefit in accordance with the following Articles of this Part.

Article 26

1. The contingency covered shall be survival beyond a prescribed age.
2. The prescribed age shall be not more than 65 years or such higher age as may be fixed by the competent authority with due regard to the working ability of elderly persons in the country concerned.
3. National laws or regulations may provide that the benefit of a person otherwise entitled to it may be suspended if such person is engaged in any prescribed gainful activity or that the benefit, if contributory, may be reduced where the earnings of the beneficiary exceed a prescribed amount and, if non-contributory, may be reduced where the earnings of the beneficiary or his other means or the two taken together exceed a prescribed amount.

CHAPTER-2

SC JUDGEMENTS RELATING TO RETIREMENT BENEFITS

Introduction

The Supreme Court's influence in the socio-political sphere of our country is undeniable and almost hallowed in quality. It is predominantly with the tool of a broadened jurisprudence in enforcing the fundamental rights, guaranteed in the Constitution of India, that it has been able to uphold the ideals enumerated in the Indian Constitution. The cardinal responsibility of the State to provide post-retirement benefits to the entitled employee or his family, in full and on time, has come under the scrutiny of the Supreme Court of India in many cases. The decisions of the Supreme Court of India has given the institutions in India an insight into the methods and means to uphold the sanctity of the right to receive pensionary benefits in India.

It is with this spirit that the National Human Rights Commission reads the denial of retirement benefits as a violation of the right to life and dignity, thus leading the country's nodal agencies in the understanding that pension or the retiral benefits may be the only source of livelihood and means of survival for a family; hence non-payment of these benefits has devastating effects on their lives. If these retirement benefits are not paid to them, the very survival of the retired employee or next-of-kin, and/or family members of the

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deceased employees comes under question, in blatant violation of their human rights.

The following are a selection of landmark SC judgments on retirement benefits, which in effect, is law in India, law on retirement benefits.

1. Sheelkumar Jain Vs. New India Assurance Company Ltd.,⁶

A special leave appeal was filed against an order of the Division Bench of the Madhya Pradesh High Court.

On 1st, July, 1969 the appellant, Sheelkumar Jain was appointed as an Inspector in Liberty Insurance Company Limited.

Under the General Insurance Business (Nationalized) Act, 1972, Liberty Insurance Company was nationalized and merged in the respondent company, namely New India Assurance Company Ltd,

Sheelkumar Jain's services were absorbed in respondent company and, in 1991, he finally was promoted to the post of Administrative Officer. He then served a letter (dated 16th September, 1991) to the General Manager of the company, stating that he would like to resign from his post and requesting him to treat the letter as three months' notice.

The Assistant Administrative Officer informed the appellant that his resignation has been accepted (with effect from 16th December, 1991) after completion of three months notice. Accordingly, the appellant was relieved from his services (on 16th December, 1991).

Thereafter, the General Insurance (Employees') Pension Scheme, 1995 was made by the Central Government. The Pension Scheme, 1995 also applied to employees who were in the service of the New India Assurance Company Ltd., on or after first January, 1986 but

had retired before the first day of November, 1993 and exercised an option in writing within 120 days from the notified date.

This was conditional upon refunding, within the specified period, the entire amount of the company's contribution to the provident fund including interest thereon as well as the entire amount of non-refundable withdrawal, if any, made from the company's contribution to the provident fund amount and interest thereon.

On 20th October, 1995, the appellant submitted an application to the respondent company opting for the Pension Scheme, 1995 and gave an undertaking to refund the entire amount of company's contribution to his provident fund account together with interest as well as the entire amount of non-refundable withdrawal, if any, made by him.

The company, however, intimated to the appellant that the Pension Scheme, 1995 was not applicable to those who resigned from the respondent company and since the appellant had resigned, he was not entitled to the same.

The appellant then filed a writ petition before the Madhya Pradesh High Court, Indore Bench, which was dismissed by the learned Single Judge.

Aggrieved, the appellant initially filed Special Leave Petition before the Supreme Court, but thereafter withdrew the same and challenged the order of the learned Single Judge before the Division Bench of the Madhya Pradesh High Court.

The Division Bench of the Madhya Pradesh High Court held that under Clause 22 of the Pension Scheme, 1995, resignation entailed forfeiture of the past services and as the appellant had resigned from service, even if he had worked for 20 years in respondent company, he cannot be equated with an employee who

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had taken voluntary retirement from service under Clause 30 of the Pension Scheme, 1995 and the Pension Scheme, 1995 did not apply to the appellant, dismissing the Writ Appeal. Though in the letter (dated 16.09.1991) to the General Manager of the respondent company, the appellant used the word 'resigned', the letter was actually a three months' notice for voluntary retirement.

The appellant argued that he had rendered 20 years service, which was the qualifying service for voluntary retirement under Clause 30 of the Pension Scheme, 1995 and thus became entitled to the pension, which should not be denied to him by saying that he had resigned from service and had not taken voluntary retirement.

Clause 22 of the Pension Scheme, 1995 which provided that resignation from the service of a company shall, in effect entail forfeiture of entire past service from same company and an employee consequently shall not qualify for pensionary benefits, was not in existence when the appellant submitted his letter and the only provision that was in force was Clause 5 of the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976, which provided that an officer or a person of the Development Staff shall not leave or discontinue his service without first giving a three months notice in writing to the appointing authority of his intention to leave or discontinue the service.

Had there been a provision similar to Clause 22 of the Pension Scheme, 1995 in the Scheme, 1976, Sheelkumar Jain would not have used the word 'resigned' in his letter.

The decisions of the Supreme Court in *Sudhir Chandra Sarkar Vs. Tata Iron and Steel Co. Ltd. & Others* [AIR 1984 SC 1064], *J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U. P. & Others* [(1990) 4 SCC 27], *Union of India & Others. Vs. Lt. Col.*

P.S. Bhargava [(1997) 2 SCC 28] and Sansar Chand Atri vs. State of Punjab & Others [(2002) 4 SCC 154] were quoted to contend that the resignation of the appellant actually amounted to voluntary retirement, in the facts and circumstances of this case.

The Supreme Court observed that the general purpose of the Pension Scheme, 1995, read as a whole, is to grant pensionary benefits to employees, who had rendered service in the Insurance Companies and had retired after putting in the qualifying service. It was further noted that Clauses 22 and 30 of the Pension Scheme, 1995 cannot be so construed as to deprive an employee, such as the appellant, of due pension when he had put in the qualifying service for pension and had voluntarily given up his service after serving 90 days notice in accordance with sub-clause (1) of Clause 5 of the Scheme, 1976 and after his notice was accepted by the appointing authority.

As a result, the Supreme Court set aside orders of the Division Bench of the High Court as well as the learned Single Judge. The above appeal was allowed, as well as the Writ Petition filed by the appellant. Respondents were directed to consider the claim of the appellant for pension in accordance with the Pension Scheme, 1995 and intimate the decision to the appellant within three months from date of judgment.

2. Bank of India Vs. Indu Rajagopalan & Others ⁷

The apex court had upheld the verdict of Hon'ble High Court which inter alia reads as: "All that has happened is in such of the banks where a scheme for voluntary retirement was available, certain employees retired under that scheme. Now, a comprehensive pension scheme had been framed which came into force with effect from 1-11-1993 and applicable uniformly to all Bank employees which

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provided for voluntary retirement as well. The applicability of these Rules to those employees who had voluntarily retired with effect from 1-1-1986 to 31.10.1993 is raised in these matters. It is not possible for Shri V.R. Reddy, learned senior counsel who appeared for the appellants to point out that there is any significant financial or other burden or difference so far as those who had voluntarily retired and those who had ordinarily retired. In that event where there is no distinction, the authorities having sought to make a distinction and not applied the regulations framed subsequent to their retirement, the High Court had given appropriate directions. We also notice that the number of employees who have retired in this manner is also very small”.

3. M.L.Jain Vs. Union of India ⁸

The petitioner, before his appointment as a Judge of the Rajasthan High Court, was a member of the Rajasthan Higher Judicial Service. He was later transferred and appointed as a Judge of the High Court of Delhi. He retired on July 21st, 1984 and had opted, for the purpose of his pension, for Part 111 of the First Schedule to the High Court Judges Conditions of Service Act, 1954.

Under this provision, the petitioner was entitled to a basic pension as per the ordinary rules of his Service if he had not been appointed a Judge and an additional pension for each completed year of service as a Judge of the High Court. The High Court Judges (Conditions of Service) Amendment Act, 1986 and 1988 brought about improvements in the service conditions, including pension, of the High Court Judges. The Government of India subsequently issued a scheme for rationalization of pension structure for pre-January 1st, 1984 pensioners.

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Pursuantly, the Ministry of Law & Justice, Government of India, issued a letter on the 18th of December, 1987, giving directions to the Accountants General/Pay and Accounts Officers as to the manner in which the basic pension of the High Court Judges, may be revised with effect from 1st January, 1986, as in the case of the employees of Central Government, or from some other date/order, the respective State Government may decide to adopt these orders.

The petitioner has claimed higher pension on the ground that service Judges with lesser service, belonging to Higher Judicial Service of some other States have been granted higher pension while he has been subjected to a discriminatory treatment in the matter.

The Supreme Court allowed the Civil Miscellaneous Petition and stated that it did not “ appreciate the propriety of the letter dated December 18, 1987 of the Ministry of Law & Justice giving liberty to different State Governments to deny the benefit of the revised pension to the Service Judges, consequent upon the enactment of the High Court Judges (Conditions of Service) Amendments Acts, 1986 and 1988 read along with Office Memoranda issued by the Department of Pension & Pensioners Welfare, dated April 14 1987, and April 16, 1987 and rule 2 of the High Court Judges Rules, 1956”.

Such a direction was held as constitutionally impermissible as it offended Art.14 of the Constitution. It was, as observed by the Supreme Court, tantamount to denial of equal treatment to persons belonging to the same class without any rational basis.

The Union of India as well as the Pay & Accounts Officer, Delhi Administration (High Court & Miscellaneous), New Delhi was directed, by the Hon’ble Supreme Court, to re-fix the pension of the petitioner, at Rs.41,600 per annum with effect from January 1, 1986

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and at Rs.46,100 per annum with effect from November 1, 1986. It was further directed that the arrears of the difference in the amount of pension be paid to the petitioner as expeditiously as possible and in any event, not later than two months from date of judgment. The petitioner was also held to be entitled to all other consequential benefits.

4. LIC & Others Vs. Retired LIC Officers Association & Others⁹

Dismissing this appeal by the LIC, the Court held that a statutory authority, while exercising its jurisdiction, would be entitled to exercise incidental power for determination of the principal issue, but in such matters, couldn't be said to have such power, which is beyond the scope and purpose of the principal provisions.

A delegate cannot act in violation of a statute. A sub-delegate cannot exercise any power that is not meant to be conferred upon him, by statutory provisions.

The Life Insurance Corporation of India (Staff) Regulations, 1960 is subordinate legislation. Chairman of the Corporation is a statutory authority.

Power to fix a cut-off date has been conferred upon him by way of statutory provision.

The basic pay and other allowances to Class II employees are regulated under the provisions contained in Schedule III thereof.

Clause (2) of Regulation 51 confers jurisdiction on the Chairman to regulate the pay as also other matters connected therewith or incidental by issuance of instructions.

It may be true that the cut-off dates were fixed upon holding negotiations with the Unions. However, the jurisdiction of the Chairman to fix a cut-off date is in question in terms of sub-regulation (2) of Regulation 51. Revision of pay, dearness allowance and other allowances applicable to the employees of the Corporation *stricto sensu* are not covered by clause (2) of Regulation 51.

Whereas dearness allowance and some other allowances, as for instance 'house rent allowance' and 'city compensatory allowance' are envisaged by IInd Schedule appended to the said Regulations, the payment of other amounts as the 'Provident Fund' and 'Gratuity' have nothing to do therewith. Provident Fund and Gratuity are ordinarily governed by the Acts enacted by the Parliament, subject to the conditions contained therein. Regulation 77 of the Regulations specifies the employees who would be entitled to payment of gratuity. Clause (2) of Regulation 77 provides for the manner in which the amount of gratuity shall be payable.

Neither the payment of Provident Fund nor the payment of Gratuity is thus covered by the provisions contained in Chapter IV of the Regulations. Method of fixation, eligibility for the benefit of revision and the date from which the revisions shall apply are thus only areas within which the Chairman can exercise jurisdiction.

The effect of revision of pay scales on other spheres and which are otherwise governed by another statute or other provisions of the said Regulations would not come within the purview thereof.

It has nothing to do with the construction of any other provision of the Regulations. The words "incidental to" cannot be interpreted too broadly. It cannot be read independently of the main provision. It cannot serve some other purpose which is not covered by Regulation 51 of the Regulations. It cannot be permitted to encroach

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upon an area which is not within the jurisdiction of the Chairman of the Corporation.

Revision of scales of pay as also other allowances is technical in nature. When a benefit is extended to a group of employees the effect of such benefit, if otherwise comes within the purview thereof must be held to be applicable to other groups of employees also.

An employee is entitled to gratuity. It is not a bounty. It is payable on successful tenure of service. Regulation 77 provides as to how the amount of gratuity is to be calculated. Regulation 51 provides for a rule of measurement. Only because it employed the word “permanent basic pay”, the same will not by itself lead to the conclusion that once an employee has retired, he would not be entitled to any revision of the amount of gratuity.

The Chairman of the Corporation has himself given retrospective effect to revision in scales of pay. Such a retrospective effect has also been given so as to benefit a class of employees. The employees, irrespective of the fact whether they had superannuated or not, were given the benefit of arrears of pay from 1st August, 1993. By reason of grant of such benefit both to serving employees as well as the superannuated employees, both the class of employees became entitled by right.

If due to the above reason, an employee became entitled to the benefit of the revised scale of pay as on the date of retirement, the same for all intent and purpose must be taken to be the permanent basic pay, apart from other allowances, if any, which are required to be taken into consideration for the purpose of computation of the amount of gratuity.

It cannot be said that the Chairman of the Corporation having power to fix the cut-off dates for different purposes, also has

jurisdiction to do so for payment of gratuity, which has a direct nexus with the revised pay of scale.

Once the Chairman fixes a cut-off date for the purpose of giving effect to the agreement vis-a-vis the payment of arrears in terms thereof, he cannot exercise further jurisdiction in respect of a matter which is not controlled by Chapter IV but is controlled by other provisions of statutes and Parliamentary Acts governing the field.

It was held by the Hon'ble Supreme Court that an employee is entitled to gratuity, and it is not a bounty. If an employee became entitled to revised pay on date of retirement, his revised pay must be taken to be permanent pay for purpose of computation of gratuity.

A delegate cannot act in violation of a statute - A sub-delegate cannot exercise any power which is not meant to be conferred upon him by reason of statutory provision - Gratuity is not covered under Regulation 51 - Provident Fund and Gratuity are ordinarily governed by the Acts enacted by Parliament subject to conditions contained therein - Regulation 77 provides as to how amount of gratuity is to be calculated - Regulation 51 provides for a rule of measurement - Life Insurance Corporation of India (Staff) Regulations, 1960 - Regulations 51 and 77 - Life Insurance Corporation of India Class I Officers (Revision of Terms and Conditions of Service) Instructions, 1996. Words and Phrases: Expression "and other matters connected therewith or incidental thereto" occurring in Regulation 51(2) of Life Insurance Corporation of India (Staff) Regulations, 1960 - Connotation of. The Chairman of the appellant-Life Insurance Corporation, pursuant to revision of pay of the employees of the Corporation, in exercise of powers under Regulation 51 of the LIC of India (Staff) Regulations 1960, issued Life Insurance Corporation of India Class I Officers (Revision of Terms and Conditions of Service) Instructions, 1996, fixing cut-off dates for grant of different

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allowances as also the pay. The cut-off date for revision of pay was fixed as 1.4.1993. However, for payment of gratuity, the cut-off date was fixed as 1.8.1994, which was challenged in some of the High Courts.

The Gujarat High Court and the Karnataka High Court upheld the validity of the 1996 Instructions whereas the Kerala High Court in the judgment under appeal took a different view. In the instant appeal filed by the Life Insurance Corporation, it was contended for the respondent, the employees, that the power of the Chairman of the appellant-Corporation to issue instructions under Regulation 51 being limited to Chapter IV of the Regulations, the 1996 Instructions had no application to payment of gratuity, which is covered by Regulation 77. The question for consideration before the Court was: Whether the expression, **“The date from which the revision shall apply, and other matters connected therewith or incidental thereto”**, occurring in Regulation 51 of the Life Insurance Corporation of India Regulations, 1960 would also include the matter relating to payment of gratuity which is otherwise covered by Regulation 77.

5. Municipal Corporation of Delhi Vs. Dharam Prakash Sharma ¹⁰

This appeal was directed against a judgment of a Division Bench of the Delhi High Court, which dismissed the writ petition of the appellant, the Municipal Corporation of Delhi, that challenged the legality of the order of the authority under the Payment of Gratuity Act, 1972 which granted extra amount of gratuity to the respondent, Dharam Prakash Sharma, an employee of the Municipal Corporation of Delhi (MCD).

The question was whether an employee of the MCD was entitled to payment of gratuity under the Payment of Gratuity Act when the MCD itself had adopted the provisions of the CCS (Pension) Rules, 1972 (hereinafter referred to as “the Pension Rules”), under which there were provisions, both, for payment of pension as well as gratuity.

The appellant’s argument was that the payment of pension and gratuity under the Pension Rules being a package by itself, and that package having been made applicable to the employees of the MCD, the provisions of payment of gratuity under the Payment of Gratuity Act could not be held applicable.

The Supreme Court examined the provisions of the Pension Rules as well as the provisions of the Payment of Gratuity Act. The Payment of Gratuity Act being a special provision for payment of gratuity, except if there is any provision, which excludes its applicability to an employee otherwise governed by the provisions of the Pension Rules, it is not possible to hold that the respondent is not entitled to the gratuity under the Payment of Gratuity Act.

The only provision, which was pointed out, was the definition of “employee” in Section 2(e), which excludes the employees of the Central Government and State Governments receiving pension and gratuity under the Pension Rules but not an employee of the MCD. The MCD employee, therefore, was held entitled to the payment of gratuity under the Payment of Gratuity Act. The fact that the gratuity was provided for under the Pension Rules did not render him ineligible to get the payment of gratuity under the Payment of Gratuity Act.

The Hon’ble Supreme Court opined that the employees of the MCD would be entitled to the payment of gratuity under the Payment of Gratuity Act, despite the provisions of the Pension Rules having

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been made applicable to them for the purpose of determining the pension. In the above circumstance, the employees cannot claim gratuity available under the Pension Rules.

6. D.S. Nakara & Others Vs. Union of India ¹¹

This case was related to pensioners being denied increased pensionary benefits due to their date of retirement.

By a Memorandum dated May 25th, 1979 the Government of India liberalized the formula for computation of pension in respect of employees governed by the Central Civil Services (Pension) Rules, 1972 and made it applicable to employees retiring on or after March 31, 1979. By another Memorandum issued on September 23rd, 1979 it extended the same, subject to certain limitations, to the Armed Forces' personnel retiring on or after April 1, 1979.

Petitioners D.S.Nakara and another, who had retired in the year 1972 from the Central Civil Service and the Armed Forces' service respectively, and Petitioner No. 3, a registered society espousing the cause of pensioners all over the country, challenged the validity of the above two memoranda in so far as the liberalization in computation of pension had been made applicable only to those retiring on or after the date specified and the benefit of liberalization had been denied to all those who had retired earlier.

Counsel for petitioners contended that all pensioners entitled to receive pension under the relevant rules form a class, irrespective of the dates of their retirement and there cannot be a mini-classification within this class. Further, that the differential treatment accorded to those who had retired prior to the specified date is a violation of Art. 14 of the Constitution of India as the choice of specified date is wholly arbitrary, the classification based on the fortuitous circumstance of retirement before or subsequent

to the specified date is invalid and that the scheme of liberalization in computation of pension must be uniformly enforced with regard to all pensioners.

Counsel for respondents contended that a classification based on the date of retirement is valid for the purpose of granting pensionary benefits, that the specified date is an integral part of the scheme of liberalization and that the Government would never have enforced the scheme devoid of the date. Further, that the doctrine of severability cannot be invoked to sever the specified date from the scheme as it would have the effect of enlarging the class of pensioners covered by the scheme when the legislature has expressly defined the class to which the legislation applies. It would be outside the judicial function to enlarge the class. There is not a single case, where the court has included some category that “If more persons divided the available cake the residue falling to the share of each, especially to the share of those who are not before the court would become far less and therefore no relief could be given to the petitioners that pension is always correlated to the date of retirement and the court cannot change the date of retirement and impose fresh commutation benefit which may burden the exchequer to the tune of Rs. 233 crores; and that the third petitioner has no locus standi in the case.”

The Hon’ble Supreme Court held that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It is attracted where equals are treated differently without any reasonable basis. The principle underlying the guarantee is that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially

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the same. “Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question. In other words, there ought to be causal connection between the basis of classification and the object of the statute”.

The doctrine of classification was evolved by the Court for the purpose of sustaining a legislation or State action designed to help weaker sections of the society. A discriminatory action is liable to be struck down unless it can be shown by the Government that the departure was not arbitrary but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

The Supreme Court of India made the following observations on right to pension.

“The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar & Ors. (1) wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension”.

“With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which was envisioned to be set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria: ‘being in service and retiring subsequent to the specified date’ for being eligible for the liberalized pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalized pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalized pension scheme of being in service on the specified date and retiring subsequent to that date’ in impugned memoranda, violates Art. 14 and is unconstitutional and is struck down”.

Omitting the unconstitutional part, it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalized pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation are not admissible.

The following two judgments have been brought forth to showcase the Supreme Court’s interpretation of the right to life including the right to dignity which is an integral part of the Commission’s elucidating stance on retirement benefits as a human right, wherein families that are denied rightful retirement benefits face starvation and poverty

7. Francis Coralie Vs. Union Territory of Delhi ¹²

The right to live is not restricted to mere animal existence:

The Supreme Court, elaborating the concept held that the right to live is not restricted to mere animal existence but it connotes something more than just physical survival. The right to 'live' is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes "the right to live with human dignity", and all that goes along with it, namely, the bare necessities of life such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being.

8. Olga Tellis & Ors Vs. Bombay Municipal Corporation & Others ¹³

In the judgment of this case, popularly known as the 'pavement dwellers case' a five judge bench of the Hon'ble Supreme Court of India ruled that the word 'life' in Article 21 includes the 'right to livelihood' also. The court held: "It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39 (a) and 41 require the State to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life."

CHAPTER-3

INTERVENTIONS OF THE NHRC

The Commission's intervention has been endeavored to realize the fundamental objectives enshrined in Article 21 of the Constitution of India. The pensioner and the family of the deceased employee have a right to live with dignity and non-payment or delayed payment of the meager pensionary benefits he/they get after retirement/death is a violation of his/their right to live with dignity. The issue becomes grave when terminal benefits of employees, who died in service, are inordinately delayed and the family suffers irreparable losses due to negligence on the part of the responsible public servants. The Commission's intervention itself, in most of the cases, results in payment of retiral benefits, including pension, whereas in other cases it enquires into the entire matter and recommends payment of the dues, in addition to compensation for damages to the victim for non-payment or delayed payment of the terminal dues and recommendation of disciplinary action against the defaulter public servants.

The Commission directs authorities to submit reports on the complaint received, within a stipulated time period, followed by reminders if required. If it is seen that the authorities, without any lawful excuse, fail to submit the requisite report, the Commission takes it as an intentional delay to avoid payment of these dues. It is pertinent to mention here, again, that the delays in payment of pension and other retiral dues always put the life of the pensioner and his family members at peril even to the extent of starvation.

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Therefore the Commission has to resort to the coercive process such as personal appearance of the authorities in the commission and so on. The Commission also recommends compensation for violation of the human rights of the employees or his family members or his NOK, under Section 18 of PHR Act, 1993 besides recommending Departmental action against the errant public servants responsible for non-payment or delayed payment of these dues. The Commission also issues notice to show cause as to why disciplinary action should not be recommended against the errant public servant u/s 16 of the PHR Act 1993; recommends making payment of interest on the delayed payment which might be recovered from the errant employees. The Commission, therefore, expects the authorities to take up cases of non-payment and delayed payment of the retiral dues of the employees promptly, and to avoid the delay in submission of reports to the Commission in such cases, leading to further delays and perpetuating human rights violations.

Important Cases regarding Non-payment or Delayed payment of Retirement dues: NHRC Interventions for Relief

- 1. Non-payment of terminal dues for 31 years, since the death of Social Welfare Department Employee in Uttar Pradesh (Case No.20804/24/24/2010)***

Shri Puttu Lal, a class IV employee of the Social Welfare Department (SWD) of the Government of U.P, died on 8.11.1979 but 31 years after his death, terminal dues had yet to be paid to his family.

The Commission took note, to which the SWD responded that the Government had paid Rs.27,390 (GPF), Rs.115 (security deposit) and Rs.3835/- (medical reimbursement) entitled to the deceased employee, in May, 2011 but, the gratuity and pension, though sanctioned, had not been paid.

Retiral Benefits as a Human Right – NHRC Initiatives

The Commission took exception to the apathy of the SWD and as a result of its directions, the SWD paid Rs. 5,72,259/- (gratuity and arrear of payment) to the complainant, Smt. Ramjilal (also known as Shanti Devi), wife of Shri Puttu Lal. It also noted the serious human rights violation of the NOK of Shri Puttu Lal and issued a show cause notice (u/s 18(a) of PHR Act, 1993) with regard to compensation for family, employment of one of the family members on compassionate grounds, identity of the negligent officials and action against them for having caused such an inordinate delay.

An interest of Rs.54,320/- was paid to Smt. Ramjilal. Time has been sought by the SWD on the matter of identifying the errant officials.

The Commission also directed the then Special Secretary, SWD (u/s 16 of the PHR Act, 1993) to give reason as to why it should not recommend the U.P Govt to take disciplinary action against her for submitting incorrect information to the Commission, thus misleading it.

Further, the Commission recommended compensation of Rs.50,000/- for Smt. Ramjilal.

II. Denial of retiral dues to widow of a government employee for 8 years, leading to great financial hardship to the family in Etah District (Case No.24824/24/22/09-10)

Shri Girendra worked with the District Welfare Officer of Etah and died during active service (on 21st December, 2001). His wife, Smt. Kiran Devi made repeated requests to the concerned authorities for payment of his retiral dues but, despite such efforts, suffered 8 years of non-payment as a widow and under great financial hardship. She complained to the Commission, hoping to alleviate her family's situation.

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The Commission called for a report from the State authorities, wherein the DSW Officer of Etah gave an excuse that the payment had not been made to the employee because the Accountant General had not sent the balance amount of GPF payment orders for his pan book.

The NHRC observed that Smt. Kiran Devi had been denied what was lawfully due to her husband, for a prolonged period of time, which is a gross violation of their family's human rights. Consequently, the State authorities responded, stating that Smt. Kiran Devi was paid Rs.30, 000 /- towards GPF Link Insurance, balance of GPF, amounting to Rs.31,050/- . Furthermore, an interest of Rs.28,462/- (@ 10 % CI) due to delay of payment, an order to conduct an enquiry into the matter and take disciplinary action on the neglectful public servant were issued by the State, on urging by the Commission.

A generic order was also issued by the State, that, in such matters, wherein it is obligated to pay an interest amount on delayed payment or denial of rightful dues, the same is to be recovered from derelict officials or officers. Such was the domino effect of this case.

III. Denial of pension and other retiral benefits by Bharat Coking Coal Limited (BCCL) in Basdevpur, upon death of employee (Case No. 636/34/4/2010)

Smt. Lilu Devi sought the Commission's intervention in the alleged denial of pension and other retiral benefits, including the compassionate appointment of her son, for a period of 8 years after the death of her husband, Shri Mathura Manjhi, on 28th November, 2002, while working in the Colliery Area No.5, Basdevpur, for Bharat Coking Coal Limited (BCCL).

Retiral Benefits as a Human Right – NHRC Initiatives

Responding to the Commission's persuasions, BCCL stated that monthly pension at Rs. 599/-, an amount Rs.61,945/- (including arrears of Rs.56,945/-) and CMPF amount Rs. 6,06,609/- was sanctioned to Smt. Lilu Dev, while a further CMPF amount Rs.2,02,203/- was paid to the son and daughter of the deceased employee along with an accrued interest on the accumulated CMPF.

Compassionate appointment of Shri Rishadar Kant Tudu, son of the late Mathura Manjhi and an amount Rs.4, 51,600/ to Smt. Lilu Devi, in lieu of employment, were also provided.

The Commission drew attention to the fact that the family of a deceased tribal employee was left without means of support due to erring public servants and asked the Chairman, BCCL to provide an additional rupees one lakh as restitution to Smt. Lilu Devi, for violation of human rights of the family, which was implemented. Action was taken against the clerks responsible for this matter and Colliery officials have been warned to be vigilant in such cases.

On receipt of proof of payment, the Commission closed the matter on 30th August, 2012 and expected the Ministry of Labour, Government of India to ensure that in case of death of an employee, no gratuity amount shall be held with the controlling authority, unless a reasonable opportunity is given to heirs of the late employee to claim it.

IV. Unpaid Provident Fund and pensionary benefits to former employees of the Assam Small Industries Corporation Ltd., in Badarpur (Case No.333/3/10/2011)

Shri B.B.Sharma and group, all former employees of the Assam Small Industries Corporation Ltd., in Badarpur ghat appealed to the Commission that they hadn't received their Provident Fund and

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other pensionary benefits, after being downsized from service (on 31st March, 2003), despite repeated verbal and written complaints.

The Commission took notice of their predicament, to which the management of the Assam Small Industries Development Corporation stated (on 19th April, 2012) that the two subsidiaries in question were shut down in 2003 and all the closure benefits entitled to the retrenched employees were released in 2005, as per the existing pay scales. The Government of Assam authorized Rs.1.37 crores for dispersion of pension benefits to the aforementioned employees. A balance of Rs.29.71 lakhs, from the total amount sanctioned, will be distributed once the Corporation receives funds.

Once the Commission was satisfied that the Provident Fund had been doled out to the workers, the matter was closed.

V. Retirement benefits due to a professor at DU withheld (Case No. 6522/30/8/2013)

The complainant stated that the Governing Body of Atma Ram Sanatan Dharam College, University of Delhi, had withheld all the retirement benefits. He alleged that the Governing Body of the College had imposed flimsy charges on him to harass and vindicate him. The complainant further stated that his provident fund and leave encashment could not be withheld even if he is found guilty of misconduct, as per the Delhi University Rules, as those were his hard earned deposits. The college management cannot stop his pension, in toto as per rules. He has requested the Commission to intervene into the matter and direct the concerned authorities to release his pension and pensionary benefits with immediate effect so as to enable him to live with dignity.

The Commission observed that an employee who has put in 42 years of unblemished service had not been paid his provident fund,

or even a provisional pension, to maintain his life with dignity. The Governing Body stopped the retiral benefit of the employee without sanction of law and orders of the competent authority or Vice Chancellor of the University. Therefore, the complainant's life has been put at stake and the Delhi University and College Management have violated the provisions of Article 21 of the Constitution of India as well as provisions of other statues.

From perusal of the record, the Commission, therefore, recommended-

- a) Payment of provisional pension to the complainant as per the provisions of the University of Delhi - Calendar (The Act, Statues & Ordinances) Vol. I, 2004" and CCS (Pension) Rules, 1972;
- b) Payment of the GPF of the complainant as per the provisions of the University of Delhi, Calendar (The Act, Statues & Ordinances) Vol. I, 2004 and Section 3 of the Govt. Provident Fund Act, 1925;
- c) Payment of the leave encashment of the complainant as per the provisions of CCS (Leave) Rules, 1972;
- d) Payment of gratuity of the complainant as per the provisions of, "the University of Delhi - Calendar (The Act, Statues & Ordinances) Vol. I, 2004"; and
- e) Disposal of the pending departmental proceedings, if any, of the complainant expeditiously.

VI. Pension not provided to Employees Union EPF pensioners of Odisha State Road Transport Corporation (Case No.1498/18/6/2011)

The complainant, Shri Ausan Ali Khan, Retired President, Odisha State Road Transport Corporation (OSRTC) alleged that the

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Employees Union EPF pensioners of OSRTC had not been provided their pension from January to April, 2011 as the concerned authority had not sent the pension amount to the State Bank of India. Due to irregularities and non-payment of pension, one Satyabadi Nayak, a retired OSRTC conductor, died in disease, for want of money.

The Commission took cognizance, issuing notice to the same authorities, calling for an expedient report, which stated that the matter was investigated and it was unearthed that, due to implementation of new application software and data migration, the disbursement of pension was being delayed in case of all the pensioners to streamline new data base. Also, the bank had wrongly mentioned the PPO Nos. in respect of a few pensioners in the list of Life Certificates, which has now been updated in the system and their pension along with arrears from November 2010 to June 2011 will be released in the month of August 2011. On receipt of the grievance, the cause of discrepancies was identified and rectified at their level despite the unacceptable nature of the excuse. Out of a total of 67 pensioners, pension to 59 pensioners was released. Copy of this report was sent to complainant for his comments and the matter is still under consideration by the Commission.

VII. Withheld EPF dues and benefits upon voluntary retirement of employee from Odisha Forest Development Corporation (Case No.2559/18/32/2011)

Shri Sangram Charan Chakhi stated to the Commission, on 24th September, 2011 that he could not acquire his EPF dues and pensionary benefits despite carrying out all the formalities, after his voluntary retirement from Odisha Forest Development Corporation, Muniguda Division of Rayalgarh district.

In conformance to the Commission's directives, regional authorities stated that the EPF dues of Shri Chakhri, being

Rs.24,934/- , were settled on 19th December, 2011 and with regard to pension, the complainant was asked to submit relevant documents to an appointed Area Enforcement Officer, for settlement of pension.

In conclusion, monthly pension, at Rs. 893/- per month, with arrear of Rs.65, 308/- was paid to him, after considerable deliberations by the Commission on June 7th , 2012 and subsequently, case was closed.

VIII. Non-payment of extraordinary pension since 1977, to widow, upon husband being killed by goons while serving as Deputy Jailer (Case No.23002/24/2002-03)

The Commission received a complaint from Smt. Savitri Devi, 80 years old, wife of Shri Brij Bhushan Dubey, stating that she had not been paid extraordinary pension by the State Government even after repeated requests, despite her husband, being killed on 30th April, 1977 by goons, while performing his duties as Deputy Jailer.

In response to the Commission's notice, the prison authorities communicated that grant of special family pension to the complainant is pending with the Government and the candidate had been asked to submit required documents.

However, the prison authorities claimed that Shri Brij Bhushan Dubey had not been performing any duty at the time of his death and according to rules pertaining to such matters, extra ordinary pension is not awarded 7 years after death, in which case the seeker is not entitled to special pension.

The Commission perceived that the appellant had pursued the matter with authorities for sanction of extraordinary pension but her efforts were in vain due to the indifferent attitude of the officials. If the authorities had taken action at the time of Smt. Savitri Devi's original plea, this loophole of extraordinary pension not being

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sanctioned 7 years after death would not be available. The point brought forth that Shri Brj Bhushan Dubey was not performing official duty at the time death is contradicted by a letter from the Inspector General, Special Jail that recommends extraordinary pension to the widow. Upon discerning the above facts, the Commission directed the U.P Government to scrutinize the matter to help the widow of the deceased employee.

After a long and considerable pursuit by the Commission, the government communicated compliance, stating that arrears of extraordinary pension amounting to Rs.5, 48,081/- has been paid to the petitioner, Smt. Savitri Devi.

IX. A matter of delay in payment of retirement dues to an employee retired from Health Division of NE Railway, Varanasi (Case No. 37757/24/2000-01)

The petitioner Sochan had filed his petition alleging that he was forced to retire from the service of Railways but his retiral benefits have not been paid.

As per representation of the individual, he was recruited in that Division on 29th April, 1977 and retired from service w.e.f. 30th November, 1994. He has submitted representation to the Commission after making efforts for the period of more than six years. Finally, the Railway Dept., processed his retirement dues case and paid Rs. 1, 31,583/- to the widow of the deceased and sanctioned Family Pension. However, PPO is yet to be issued. Railway Dept., delayed the matter for more than six years, even after issue of notice by the Commission. It appears that the employee did not get his legitimate dues in his lifetime, which is a serious matter. He died, in hope of the payment of dues, which were withheld by the Department.

Retiral Benefits as a Human Right – NHRC Initiatives

In the light of the above, the Commission held that the human rights of the complainant (now deceased) were violated by Railways Dept., by delaying payment of his dues. In the opinion of the Commission, it appears to be a fit case for grant of compensation u/s 18 (a) (i) of the Protection of Human Rights Act, 1993.

Pursuant to the direction of the Commission, a report was received from the Executive Director (Establishment), Railway Board, Govt. of India, New Delhi. It was reported that the dues of the petitioner amounting to Rs. 1,31,583/- , were paid. Thereafter, an amount of Rs. 190302/- , as arrears of family pension and difference in revision of pension was paid to the widow of the petitioner, as apparently, the petitioner expired after filing his petition.

It may be noticed that some payment, as per the report of the Executive Director (Establishment), Railway Board, New Delhi was first made to the petitioner when he was alive and the remaining amount, after his death, was paid to his widow. No further complaint in this regard was received in the Commission. Under the circumstances, it was of no use to continue the proceeding.

X. Commission's intervention to avail terminal benefits due to complainant on the death of her husband who served in CRPF (Case No.535/4/26/2012)

The complainant, Smt. Tanuja Kumari prayed the Commission's intervention to receive the terminal benefits due to her, on the death of her husband Shri Chandan Kumar who worked in CRPF and died on 13th October, 2009 in a road accident, while on duty. She was paid Rs.11,000/- as ex-gratia and assured of any future assistance, by the Commandant. However, when the petitioner applied for compassionate appointment, she was told terminal benefits couldn't be received without a succession certificate issued

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by Court. During the process of filing a writ petition in the Court, her in-laws exiled her from home and submitted in the Court that the complainant was never married to the deceased employee, in response to which the complainant enclosed copies of the letters issued by CRPF authorities addressing her as the wife of the deceased, her marriage invitation cards and marriage photographs, pleading the Commission's direction for payment of benefits and compassionate appointment at the earliest.

The Commission noted that the CRPF authorities paid ex-gratia amount Rs.1, 000/- and immediate relief of Rs.10, 000/- to the complainant in her status as wife of the deceased employee. Also, the Director General of Police, Bihar categorically asserted that the petitioner is the wife of the deceased Shri Chandan Kumar and her in-laws are attempting to grab all the benefits of her husband.

Successive to the recommendations of the Commission, it was informed that Chandan Kumar of 205 COBRA had not changed his nomination in the Service Book after his marriage to the Smt. Tanuja Kumari which was why the unit could not decide the correct NOK for floating pensionary benefits and compassionate appointment in the absence of a succession certificate from the court.

Thereafter, the Commission cited the guidelines on CRPF's website regarding the families of deceased employees wherein there was clarity that no succession certificate is required for payment of family pension, gratuity etc.

Consequently, a pension proposal was sent to the Pay and Accounts Office in New Delhi and the matter is still under consideration of the Commission.

XI. Commission approached to avail of retirement benefits, including medical reimbursement of late primary teacher in Rewari District of Haryana (Case No.6900/7/16/2012)

In this case, Smt. Kanta Devi could not obtain retirement dues, including medical reimbursement, pension and gratuity of her late husband, who worked as a primary teacher at Bhadawas in District Rewari for the State Government of Haryana and died on the 17th February, 2012.

In line with the notice dispatched by the Commission, the concerned authorities revealed that the dues regarding monthly assistance, GPF, saving fund etc., have already been cleared. The gratuity case was sent to the Accountant General, Haryana and it was also mentioned that the matter of medical bill reimbursement was referred to the Government Health Department for seeking clarification as to whether said claimant is indeed eligible for such reimbursement. The above communication was forwarded to the petitioner for her comments but due to a lack of response, the Commission further considered the matter and closed the file.

XII. Unpaid retiral benefits i.e. pension, gratuity, leave commutation and insurance payment (Case No. 466/35/8/09-10)

This case relates to the complaint received from Smt. Pareshwari Bisht, w/o Shri Mahaveer Singh Bisht, stating that her husband Shri Mahaveer Singh Bisht, retired as District Education Officer, Pauri Garhwal on 30th November, 2006 but he was not paid his retiral benefits i.e. pension, gratuity, leave commutation and insurance payment.

The Commission noticed that the complainant alleged that the matter of pension and gratuity of her husband was deliberately made complicated to harass and exploit them as her husband was never

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transferred as District Education Officer, Pithoragarh but he was only authorized to look after its duties as additional charge.

The family suffered economically, mentally and socially due to huge delay in sanction of the “Badhya Pratiksha Avakash”. The complainant has also stated that during the period of the said “Badhya Pratiksha Avakash”, her husband was selected for promotion but he was not promoted. She requested necessary direction of the Commission in this matter.

The Commission considered the matter and observed that the complainant’s husband Shri Mahabir Singh Bisht was promoted on 22nd June, 2006 and the claim of the complainant seemed to be unjustified. The Commission also noticed that GPF, Encashment of Earned Pay Leave and Group Insurance Amount, totaling Rs 8,44,975/- was already paid to the complainant’s husband during the year 2007 and the remaining amount of Rs. 24,18,637/- was paid on 20th October, 2011, consequent to the Commission’s interventions. From the copies of the letters enclosed by the Secretary, Govt. of Uttrakhand, it was apparent that the complainant’s husband did not submit his pension application papers and service book records in the O/o District Education Officer, Pauri Garhwal despite various letters sent by the authorities which also caused delay on initiation of the payment of his remaining terminal dues.

In these circumstances, no further intervention of the Commission is required and the file is closed.

XIII. Denial of pensionary benefits, after retirement, for service as a scavenger in local panchayat (Case No.1070/22/35/2012)

P.Palani alleged to the Commission that, after retiring from service on the 30th of May, 2010, he couldn’t receive pensionary benefits, despite repeated requests.

Consequent upon the notice issued by the Commission, the concerned Block Development Officer informed that while the applicant worked as a scavenger in the local panchayat. He was allowed to retire on attaining superannuation and the pension proposal was forwarded to the relevant auditing office but it was only after the sanction is accorded that the amount could be paid. It was further declared that immediate action would be taken in the matter and an entitled pensioner would not be deprived of his right.

In conclusion, the Commission received correspondence that the retirement benefits due to the petitioner, amounting to a total of Rs. 5, 4,333/-, was paid.

Petitioner communicated receipt of all the due benefits and expressed his gratitude to the Commission.

XIV. Refusal of retirement benefits to Rural Development Officer in Malkapur on charges of misappropriation of government money (Case No.3057/13/8/2012)

Sudam Yesuji Hiwale, aged 82 years, was serving as Rural Development Officer at the office of Panchayat Samiti in Malkapur. During service, he was charged with misappropriation of government money and after a departmental hearing, punishment was awarded to him in December, 1992. This order was set aside on appeal to a higher authority in the nearby district and despite this development, retirement benefits have not been awarded to him.

In its open hearing in Nagpur on the 28th January, 2013, the Commission was informed by the authorities that the complainant's claim was expedited since the order clearing his record and assured that all dues would be cleared within two months.

Further, the Zilla Parishad informed that the termination period of the complainant was treated as service period with Rs. 42,119/-

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towards salary, an additional amount of Rs. 6, 00,506/- as salary difference and Rs. 12,070/- as gratuity difference was also paid. Such was the conclusive effect of the Commission's intervention.

XV. Non-payment of retiral dues to a differently abled heart patient, who served as Assistant Manager of Industries at Agra, U.P (Case No.2456/24/1/2013)

Smt. Anita Pandey has sought the Commission's help for obtaining payment of her husband Shri Manish Kumar Pandey's retirement dues in lieu of his service as Assistant Manager, Industries at Agra, U.P. He is a differently abled person, suffering from heart disease.

Despite several requests, he was paid the arrears of ACP dues and insurance amount, whilst a sum of Rs.79, 312/- was illegally deducted from his gratuity.

Responding to Commission's notice, the concerned authorities at Industries Department stated that the former employee had been given benefit of ACP while his pension and other retirement benefits had been sanctioned and were being paid through the treasury at Agra. It was alleged that the delay in payment had occurred due to a late submission of pension papers by the complainant's husband. The report carrying above information has been forwarded to the complainant for comments, if any.

XVI. Family pension due for the service of a sweeper in Sadar Paharganj Zone of New Delhi, for a period of 28 years (Case No. 7339/30/1/2012)

Smt. Chanderwati claimed to the Commission [in her complaint on 4th October, 2012] that her husband Shri Mangal, who worked as a Sweeper in Sadar Paharganj Zone of New Delhi, died in 1984, but she had still not received family pension for 28 years.

Responding to the Commission's queries, the concerned sanitation authorities informed that the complainant's son had submitted certain documents, which, on perusal do not ascertain if his father had ever worked in the corporation as a Swachchata Karamchari. However, despite the lack of documentary proof, the applicant had been engaged in the same post, on compassionate grounds, soon after her husband's death. All dues of Smt. Chanderwati have been paid and nothing is due to her.

The Commission directed the same authorities to furnish a report specifying the grounds of such a compassionate appointment, but as the requisite report was not received within the stipulated period, it took a serious view of the matter, having issued a final reminder. Failure of action would invite an invocation of Section-13 of the Protection of Human Rights Act, 1993. This case is still under consideration.

XVII. Unpaid pension and gratuity, due to a voluntarily retired Railway Department employee currently suffering from cancer (Case No. 29794/24/34/2013)

Satish Kumar Bhatnagar took Voluntary retirement from Railway Department early in 2013 due to his ill health, was subsequently diagnosed with cancer and is under treatment in Rajiv Gandhi Cancer Hospital, New Delhi. He alleged to the Commission that his pension and gratuity had not been released and was apprehensive of being compelled to forego treatment due to financial crisis.

Commission issued notice to the concerned Railway Authorities and was informed that the Voluntary Retirement of Shri Satish Kumar Bhatnagar was accepted and his terminal dues were paid.

XVIII. Pension not released to Retired College Attendant (Case No. 37977/24/2002-2003)

The complainant Jadav Devi, on 27th December, 2002 stated that she had retired as attendant from Hazan Mal Somani Inter College, Palika Nagar, Vrindavan, on 30th November, 1991. However, her pension had not been released, as on the date of her complaint to the Commission, and her pension papers were not forwarded. The Principal Sh. G.P. Johri had threatened her that her pension may not ever be released. As a result of this, she had faced huge paucity of funds, further leading to the loss of life of her ailing son on 2nd November, 2003.

The Commission observes that human rights of the complainant had been violated by the State of UP, by delaying payment of her pension and gratuity for more than sixteen years. It recommended for action to be taken against any officer/official responsible for delay in payment. It also directed the Principal Secretary, City Development, UP to look into the matter of the lack of responsibility of the concerned authorities in the payment of the dues, re-examine whether all the dues had been paid to the complainant as per the rules and for a report stating whether interest has been paid, on account of delayed payment.

In response, the complainant confirmed receipt of Rs. 87,155/- as arrears of pension (@Rs. 441/-pm). She has further stated that her pension was being paid @Rs.284/-, which is less than the sanctioned pension. She further alleged harassment by the Ass. Director (Pension) Agra and Municipal Corporation, Vrindaban.

In response to the commission's direction on this, the pension of Smt. Jarav Devi was re-calculated.

Sh. Alok Ranjan, Principal Secretary, Urban Development Department, UP was requested to submit a complete report in regard

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to the recalculation of pension and payment of updated arrears of pension including revised pension along with interest.

According to the report, the pension of the complainant had been revised and was being paid @Rs 426/- per month, plus dearness relief as admissible from time to time. It has further been reported that arrears of re-calculated pension amounting to Rs. 10, 423/- has also been paid to the complainant on 17th February, 2009.

The Commission was happy to note that State of UP had finally paid pension to the complainant, which was due since 1991. Reports are taken on record and the case was closed.

CHAPTER-4

CONCLUDING REMARKS

India is a country, which is ripe to enter into the category of developed nations, with its advancements in the field of Information Technology, Defence etc. However, no scientific or industrial advancement can ensure the happiness of its people until and unless their rights are promoted and protected.

Right to receive retiral benefits, as per entitlement, has evolved into one of the most important human rights. The pioneering role of the Supreme Court of India and institutions, like the NHRC, has given impetus to this right. However, the role of the Executive for proper implementation of the social security legislations, ensuring timely payments to the concerned beneficiary, is of paramount importance. NHRC India plays the role of a facilitator, which ensures that when a victim of violation of rights to retiral benefits approaches the Commission, his matter is inquired into by the concerned State functionary and adequate relief is provided to the victim.

The Commission expects that the Executive in India will understand their important role in strengthening the social security regime in the country and take all necessary steps to promote and protect the rights of the entitled persons to receive retiral benefits. NHRC has a strong belief that when all the stakeholders contribute in this resolve, a happy and developed India will not be a distant dream.

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