

6. Ajay Kumar Jain Vs St. of Uttar Pradesh & anr. reported in 2024 SCC OnLine SC 3677

(Delivered by Hon'ble Shree Prakash Singh, J.)

In Re C.M. Application No. 1 of 2024-(Condonation of Delay)

1. The reason explained in the affidavit filed in support of the application for condonation of delay is sufficient.

2. Accordingly, application is **allowed**.

3. Delay is condoned.

In Re C.M. Application No. 2 of 2024-(Modification)

1. Heard Sri Vinay Kumar Singh, counsel for the applicant-petitioner, Standing Counsel for the State, Sri Mayank Sinha, counsel for opposite party nos. 2 to 5.

2. Instant modification application has been filed with the prayer to modify the order dated 24.05.2024 to the extent that the interest amount on delayed payment of gratuity of amount Rs. 26,897/- be paid to the applicant-petitioner.

3. The Writ A No. 3505 of 2024 (Ram Pal Singh Vs. State of U.P. and Ors.) was filed with the following main prayer:-

"Issue a writ order or directions in the nature of Mandamus commanding the opposite parties to make the payment of Rs. 26,897/- along with interest which was deducted on 09.09.2004 vide gratuity payment letter no.-982."

4. The factual matrix of the case is that the petitioner was working as an Office

Assistant-II in the Office of Executive Engineer, Vidhut Vitran Nigam-Ist, Ayodhya and was superannuated on 31.08.2004. After his retirement, the gratuity amounting Rs.2,32,829/- was paid to him on 9.9.2004 and an amount of Rs.26,897/- was allegedly withheld without giving any cogent reason. Even after several request regarding the payment of the gratuity, no action was taken and being aggrieved the above-said writ petition was instituted.

5. After hearing the parties at length in the above-said writ petition, the Writ Court passed the order on 24.05.2024, which is reproduced hereinunder:-

""On 6.5.2024, following order was passed:-

"Contention of learned counsel for the petitioner is that after the order dated 24-08-2023 passed by this court in Writ A No. 6130 of 2023, the representation of the petitioner is decided vide order dated 04-12-2023, wherein making justification of the deduction of the amount of Rs. 26,897/- from the gratuity payable to the petitioner. He next added that the aforesaid amount is deducted on the ground that the same was paid as excess payment, during the service period but there is no law with respect to the deduction of the amount from the gratuity. He also added that in the absence of any such provisions, the order itself is not sustainable in the eyes of law.

In view of the above, Sri Nitin Mathur, learned Additional Chief Standing appearing for the State as well as Sri Ran Vijay Singh, learned counsel for the opposite parties no. 3 to 5 are hereby directed to seek instructions that under what provision, the amount of Rs. 26,897/- has been deducted from the gratuity of the petitioner ?

As prayed, list/put up this matter in the next week, as fresh."

Sri Ran Vijay Singh, learned counsel for the respondent nos. 3 to 5, on the basis of instructions, submits that though the order has been passed for deduction of amount of Rs.26,897/- from the payment of gratuity but there is no overt provision for deduction of the same.

Since the authorities have failed to provide any instructions to the counsel regarding provision of deduction of any amount from gratuity of an employee, the order dated 4.12.2023 cannot sustain and, thus, the same is hereby quashed.

The matter is remitted back to the respondent no.5 to consider and the decide the matter afresh with respect to payment of amount of Rs.26897/- against the gratuity amount payable to the petitioner within a period of two weeks from the date a certified copy of this order is produced before him.

With the aforesaid observations, the writ petition is allowed.""

6. Vide the order aforesaid, the Writ Court directed the respondent no. 5 in the writ petition, to consider and decide the matter a fresh with respect to the payment of amount of Rs. 26,897/- against the gratuity amount.

7. It is an admitted fact that the gratuity amount Rs. 26,897/- have been paid to the applicant-petitioner which is apparent from paragraph no. 6 of the modification application.

8. The modification application is filed while raising the grievance that the order dated 24.5.2024 has never been challenged by the opposite party rather the same has been complied with, but the interest part has not been paid yet.

9. Submission of counsel for the applicant-petitioner is that the applicant-petitioner was under impression that the prayer has been sought for payment of interest on the gratuity amount and there is settled proposition of law for payment of interest on the delayed payment of amount of gratuity and therefore, the applicant-petitioner expected that the interest would be paid to him, but in fact the department did not pay the same. He further submits that since it would not be open for the applicant-petitioner to go into other round of writ petition seeking the payment of interest on the gratuity amount as the plea and prayer has already been taken in the Writ A No. 3505 of 2024. He submits that the law is settled on this issue.

10. In support of his contention, the counsel for the applicant-petitioner has placed reliance on the judgment rendered in the case of **H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd (2003) 3 SCC 40** and referred paragraph no. 9 and 10. Paragraph nos. 9 and 10 are read as follows:-

"9. It is clear from what is extracted above from the order of the learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled to payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7(3-A) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and

that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case the amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to Section 7(3-A), no discretion was left to deny the interest to the appellant on belated payment of gratuity. Unfortunately, the a Division Bench of the High Court, having found that the appellant was entitled to interest, declined to interfere with the order of the learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned Single Judge could not be said to be arbitrary. In the first place in the light of what is stated above, the learned Single Judge could not refuse the grant of interest exercising b discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary.

10. In the light of the facts stated and for the reasons aforementioned, the impugned order cannot be sustained. Consequently, it is set aside. The respondent is directed to pay interest @ 10% on the amount of gratuity to which the appellant is entitled from the date it became payable till the date of payment of the gratuity amount. The appeal is allowed

accordingly with cost quantified at Rs 10,000."

11. Referring the aforesaid, he submits that the Hon'ble Apex Court while interpreting the provisions of sections 7(3-A) and 8 of the payment of Gratuity Act, 1972(hereinafter referred to as Act 1972) has held that the interest on the delayed payment of gratuity is mandatory and not discretionary. It is further held that if there is no delay due to fault of the employee then the employer is under the bounden duty to make payment of interest on the delayed payment of gratuity.

12. Further submitted that in case of **D.D. Tewari (Dead) Through legal representatives Vs. Uttar Haryana Bijli Vitran Nigam and Ors. (2014) 8 SCC 894**, the Hon'ble Supreme Court in paragraph nos. 6 to 8 has dealt with the matter which covers the case of the present petitioner-applicant with four corners. Paragraph nos. 6 to 8 are quoted hereinunder:-

"6. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31-10-2006 and the order of the learned Single Judge after adverting to the relevant facts and the legal position has given a direction to the respondent employer to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid

legal principle laid down by this Court in the judgment referred³ to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.

7. It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972. Having regard to the facts and circumstances of the case, we do not propose to do that in the case in hand.

8. For the reasons stated above, we award interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of entitlement till the date of the actual payment. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date the amount falls due to the deceased employee. With the above directions, this appeal is allowed."

13. Referring the aforesaid, the counsel for the petitioner-applicant has emphasized that it has been very specifically held by the Hon'ble Apex Court that the pension and gratuity are not a bounty to be distributed by the Government rather it is valuable right and property of the employee and any culpable delay in disbursement of the same shall visit with the penalty of payment of interest.

14. Concluding his arguments, he submits that since the law is settled on this issue that the delayed payment of the gratuity mandatorily requires the payment of interest on the same and further the

applicant-petitioner in the writ petition has very specifically sought directions for payment of interest on the delayed payment of gratuity, which has inadvertently been left to be directed in the order dated 24.05.2024, therefore, it is humbly prayed that the respondent no. 5 may be directed to make payment of interest on the delayed payment of gratuity.

15. Contradicting the aforesaid contentions, the counsel for the Madhyanchal Vidhut Vitran Nigam Ltd. submits that the order dated 24.05.2024 has been passed wherein, the direction was for payment of the rest of the gratuity amount of Rs.26,897/- and in-compliance thereof, the same has been paid vide letter dated 12.07.2024. He also submits that the applicant-petitioner had received excess amount in salary in between December, 1987 to December, 1995 and there was no other means to recover his salary therefore, the same is adjusted from the interest and therefore, there is no due of any payment of the applicant-petitioner, therefore, submission is that the instant application is liable to be dismissed.

16. Considering the submissions of counsel for the parties and after perusal of record, it transpires that the applicant-petitioner instituted a writ petition wherein, the direction was issued to the respondent no. 5 of the writ petition that the applicant-petitioner will be paid Rs.26,897/- against rest of the payment of the gratuity amount. It is apparent from the prayer made in the writ petition that the interest was also demanded vide the prayer.

17. The argument of learned counsel for the opposite party is of two fold, one that the interest on the gratuity amount is not directed to be paid to the

applicant/petitioner. Secondly, the modification application is not maintainable after final order is passed.

18. So long as the first part of the contention is concerned, the law with respect to payment of interest on the delayed payment of gratuity is utterly clear as it is trite that the interest on such delayed payment of gratuity is neither penal nor compensatory in nature and further it is a necessary corollary to the retention of money by other person. It has been said in so many words that the payment of interest on the gratuity amount is mandatory and not discretionary to decide regarding the payment of the same.

19. Time and again, it has also been held that pension and gratuity are not mercy or courtesy shown by the Government, after the retirement of the employee, rather it is valuable right and therefore, if there is any delay in settlement and disbursement of the same, the same would visit the penalty of payment of interest.

20. Case in hand is that the deduction of an amount of Rs.26,897/- against the gratuity amount was done by the department in lieu of an adjustment of excess payment of salary which is no way permissible under the law. While filing the objection, this plea has specifically been taken by the respondent corporation that the interest could also not be given as there had been excess payment of salary started from December, 1987 to December, 1995 to the applicant-petitioner. This plea in fact is not acceptable in light of the settled proposition of law.

21. Whereas, the first and foremost question with regard to the maintainability

of the modification application is concerned, admittedly, the writ petition has finally been decided on merits. Now, whether the modification application is maintainable in a matter where the final order is passed, is the point of determination?

22. Speaking with common sense, it would be said that if the pleading and prayer are there, then, denying the opportunity of modification in the final order would be unjustifiable as the same would give multiplicity of the litigation, but law which settled over period of time is that, such modification application is not maintainable.

23. This Court may refer the case of **State of Uttar Pradesh Vs. Brahm Datt Sharma and Another reported in (1987) 2 SCC 179**. Paragraph no. 10 the judgment is reproduced hereinunder:-

"Constitution of India- Article 226 Miscellaneous application, filed In an already decided writ petition, to revive proceedings in respect of subsequent events after long lapse of time (2 years) not entertainable Procedure Practice and

Held:

When proceedings stand terminated by final disposal of writ petition it is not open to the court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed there would be confusion and chaos and the finality of proceedings would cease to have any meaning."

24. The Apex Court has held that for reviving the proceedings in a finally

decided writ petition, no Miscellaneous Application would be maintainable.

25. In case of **Supertech Limited Vs. Emeraled Court Owner Resident Welfare Association and Others** Miscellaneous Application No. 1572 of 2021 in Civil Appeal No. 5041 of 2021, the Hon'ble Supreme Court has held as follows:-

"11 The attempt in the present miscellaneous application is clearly to seek a substantive modification of the judgment of this Court. Such an attempt is not permissible in a miscellaneous application. While Mr Mukul Rohatgi, learned senior counsel has relied upon the provisions of Order LV Rule 6 of the Supreme Court Rules 2013, what is contemplated therein is a saving of the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent an abuse of the process of the Court. Order LV Rule 6 cannot be inverted to bypass the provisions for review in Order XLVII in the Supreme Court Rules 2013. The Miscellaneous application is an abuse of the process.

12 The hallmark of a judicial pronouncement is its stability and finality. Judicial verdicts are not like sand dunes which are subject to the vagaries of wind and weather. A disturbing trend has emerged in this court of repeated applications, styled as Miscellaneous Applications, being filed after a final judgment has been pronounced. Such a practice has no legal foundation and must be firmly discouraged. It reduces litigation to a gambit. Miscellaneous Applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions. A judicial pronouncement cannot be subject

to modification once the judgment has been pronounced, by filing a miscellaneous application. Filing of a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly ["Quando aliquid prohibetur ex directo, prohibetur et per obliquum"].

13 Further, there is another legal principle which is applicable in the present case. It is that where a power is given to do a certain thing in a certain way. the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. Hence, when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all and other methods of performance are necessarily forbidden. This Court too, has adopted this maxim". This rule provides that an expressly laid down mode of doing something necessarily implies a prohibition on doing it in any other way."

26. It has been held that by way of Miscellaneous Applications seeking a substantive modification of the judgment, is not permissible as the same is amount to abuse of the process and that would also create unended multiplicity in the proceedings.

27. More recently, in the case of **Jaipur Vidyut Vitran Nigam Ltd. v. Adani Power Rajasthan Ltd.**, reported in **2024 SCC OnLine SC 313**, it has been held as follows:-

"We felt it necessary to examine the question about maintainability of the present application as we are of the view that it was necessary to spell out the

position of law as to when such post - disposal miscellaneous applications can be entertained after a matter is disposed of. This Court has become functus officio and does not retain jurisdiction to entertain an application after the appeal was disposed of by the judgment of a three-Judge Bench of this Court on 31.08.2020 through a course beyond that specified in the statute. This is not an application for correcting any clerical or arithmetical error. Neither it is an application for extension of time. A post disposal application for modification and clarification of the order of disposal shall lie only in rare cases, where the order passed by this Court is executory in nature and the directions of the Court may become impossible to be implemented because of subsequent events or developments. The factual background of this Application does not fit into that description."

28. This law has also subsequently been followed in the case of **Ajay Kumar Jain v. State of Uttar Pradesh and Another** reported in **2024 SCC OnLine SC 3677**.

29. Undoubtedly, in the final order dated 24.5.2024 passed in Writ A No. 3505 of 2024, there is no direction for payment of interest on the delayed payment of gratuity as the matter was remitted back to the respondent no. 5 to consider and decide the matter with respect to the amount of Rs. 26,897/- against the gratuity amount. The prayer for payment of interest on the gratuity amount in all senses, are the substantial prayer.

30. It is apt to say that this Court after passing the order has become functus officio and does not retain the jurisdiction to entertain an application for substantially decided issues. In fact this is modification

application and not an application for correction or any clerical or arithmetic error or application for extension of time, therefore, in the considered opinion of this Court, the modification application would substantially and majorly change the nature of the order dated 24.05.2024.

31. Hence, this Court finds force in the objection made by counsel for the opposite parties regarding the maintainability of the modification application.

32. Resultantly, the modification application is **dismissed** on the ground of maintainability.

33. Needless to say that the remedy of filing review petition is always open to the petitioner.

34. Consigned to records.

(2025) 5 ILRA 903

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 13.05.2025

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Writ - A No. 6048 of 2024

Smt. Kusum Lata Singh ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Sri Vinay Kumar Tiwari

Counsel for the Respondents:
C.S.C.

Service Law – Leave Encashment – Delay in Payment – Retiral Dues as Property – Petitioner retired on 31.03.2018 as Assistant