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Current Position and Way Forward for Settlement of Retiral Dues of Employees

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Abstract

The settlement of retiral dues for employees stands as a critical aspect of organizational management, entailing financial, legal, and procedural considerations. Financial planning is pivotal to ensure adequate funds are earmarked for this purpose, safeguarding the organization's fiscal stability. Compliance with labour laws and contractual obligations is imperative to avert legal ramifications. Transparent communication with employees regarding the settlement process, timelines, and required documentation fosters trust and clarity. The disbursement process necessitates meticulous coordination with finance departments and adherence to documented procedures. Continual review and enhancement of settlement processes are essential for efficiency and adaptability to evolving regulatory landscapes. This may encompass process automation, voluntary retirement schemes, and outsourcing options to streamline administration. Moving forward, organizations must prioritize innovation and employee-centric approaches, considering factors such as automation, voluntary retirement schemes, and financial counselling to facilitate seamless transitions into retirement while upholding organizational integrity and employee welfare. By integrating these strategies, organizations can navigate the complexities of retiral dues settlement effectively, fostering employee satisfaction and organizational resilience.

Keywords: *Retiral Benefits, Retirement, Superannuation, Premature Retirement, Death*

"Let God save the Gramins."

The above are the concluding words of a very impactful, though may not be a celebrated Judgment of the Honourable Supreme Court of India delivered way back in 2012 by Honourable Justices K.S Radahakrishan and Justice Deepak Mishra in ***Gurugram Gramina Bank v. Khazani.[2]***

Well before the above observations were made, the Supreme Court of India in ***Dilbagh Rai Gary v. Union of India and others[3]*, through Justice V R Krishna Iyer** has said as under.

> *"It must be remembered that the state is no ordinary party trying to win a case against one of its own citizens by hook or by crook. For the state interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage simply because legal devices provide such opportunity.*

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[2] AIR 2012 SC 2881
[3] 1974 (3) SCC 554

The State is a virtuous litigant and looks with unconcerned on immoral forensic success so that if on the merits of the case is weak government shows willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in courts."

The above is a prelude to understand and analyse the problems and travails of Ordinary Citizens in the Context of receipt of their Retiral benefits from their employers on their cessation of Service either by retirement on superannuation, Resignation, Premature Retirement, Death, and other forms of Cessation of Service. The payment of Retiral benefits such as pension, Gratuity, Leave Encashment, Payment of provident fund dues etc have been well documented in the Indian context especially post-independence of India. All segments of employees in the Civil and Military segment as well as in the Formal and Informal Categories of Employment have their own experiences to narrate and share on this issue. The settlement of Retiral benefits is marked by delays, litigation and has often brought about unpleasantness.

Scheme under the Constitution of India

The Constitution of India is the guiding document by which all the goals and aspirations of our populace are to be fulfilled. The Constitution has been described quite richly by our experts in different fields.

The Constitution of India as we all understand is an all-inclusive social, political, legal, and economic document, by which the aspirations of the people of this country are to be achieved. Through a scheme of separation of powers and Federal structure, the Constitution has envisaged that the structures so created would continuously and relentlessly work towards the achievement of its Objectives. The Constitution itself guarantees in many ways the rights of the citizens of this country by providing adequate and necessary remedies including by way of filing writs and in some situations by approaching the Supreme court directly under Article 32 of the Constitution of India.

If we look at from a very Macro perspective, there are mainly two key constituents who work tirelessly on our Constitution. One is vested with the Power, Authority, Responsibility and Duty to make the constitution work by dispensing the various services that come under their purview and jurisdiction and while the others are the seekers or recipients or beneficiaries of their entitlements defined under different relationships. One such relationship arises in the context of employment and is widely known as Employer and Employee Relationship.

In the Indian context the mass of employers can be categorised into Central Government, State Government, Public Sector, Private, Autonomous, Cooperatives. Through the years passed by, we have observed and seen that inevitably and invariably, conflict situations do manifest in the employer and employee relationships needing the redressal by a third party. The establishment of separate Tribunals like Central Administrative Tribunal, Industrial Tribunals constituted under the Industrial Disputes Act 1947, are essentially an off shoot of the need and desire to solve this conflict situations in the Employer and Employee Relationship. The awards

GLS KALP
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rendered by the specialised Tribunals ultimately end up in the Higher Echelons of our Judiciary i.e., the High Courts and the Supreme Court.

Employer and Employee Relationship

In the employment sphere, the relationship of employer and employee is a very critical and crucial one. This relationship being a very long lasting and enduring one in substantial cases, can be further categorised into when the person is in employment, and thuss rendering service to the employer, and the other is when he ceases to be an Employee but still continues to have a relationship with the employer for some point of time and in some cases even up to the date of the employee and beyond. The Relationship is further characterised by the nature of employment, which one enters at the time of his employment. This can be permanent or temporary, contractual,full-time part-time etc.

Employee Benefits

The benefits which an employee normally is entitled and are payable at the at the time of his retirement are as under.

1. Leave Encashment
2. Provident Fund
3. Pension.
4. Gratuity
5. Group Linked Insurance Saving schemes.

The settlement of the retiral benefits of an employee has been a very complicated and complex subject. It would be pertinent to note that despite all the intent, sincerity and efforts made in this direction, we still face situations of the delay in disposal and settlement of retiral dues. In order to avoid ambiguity and unnecessary complications, our law makers and other experts involved have invested their time and efforts in framing Rules and Regulations for settlement of the above-mentioned dues.

The framing of rules and regulations for the pensioners and the application of the same by the authorities concerned and later the final interpretation given by Courts and Tribunals have enriched the jurisprudence on this subject. A quick reference to the Categories of employment will be useful to understand the magnanimity of the problem.

- Central Government Employees
- State Government Employees
- Corporations established by or under a Statute at Central Government and State Government Level.
- Public Sector employees in different kinds and areas of business.
- Autonomous Bodies such as Research Institutions, Scientific Bodies etc
- Private Sector bodies.
- Cooperative Sector.

The settlement of retiral dues is done under the maze of several rules and regulations. The Ccentral government, the State governments, Aautonomous institutions, public sector, banks, and others, which include the private organisations, including cooperative societies and other forms of business entities have all contributed to the settlement of very important questions of law on this matter.

Legislative Framework and passing of Various Rules and Regulations: The efforts to streamline the process of payment of retiral dues has been preceded by framing and passing of Legislative measures and framing of necessary Rules and Regulations.

The most important Rules and Regulations we can easily refer to and bank upon are the Civil Pension Rules and Regulations. These Rules are applicable to the Central Government Employees and later they have been adopted by the employees in the Railways. Similarly, State Governments have passed their own Rules and Regulations especially in the area of payment of pension. Statutory Corporations established by or under a Statute usually have framed Regulations in terms of the Statutes Governing them.

The Corporate Sector both in the Government and Non-Government sphere have also framed the Regulations applicable to their employees. There were several matters settled by the Honourable Supreme Court of India. These cover a wide range of spectrum and issues on the eligibility, length of service, meaning of qualifying service, Quantum Of pension, pendency and disposal of Disciplinary proceedings, Criminal Proceedings effect of Cut off dates, effect of pay revision, prospective and Retrospective effect were all dealt and addressed by the Apex Court of the Country.

The Honourable Supreme Court of India has dealt with many issues relating to the payment of pension, gratuity, Provident fund over the last many years. The decisions were rendered in cases filed by individuals, cases filed by central government, cases filed by state governments, cases filed by public sector banks and many other such bodies and associations. The legal experts will find and waste no time in helping us with the pronouncements made by the Supreme Court and other High Courts of this country from time to time on the nature of the rights of the retired employees and other benefits that a retired employee needs to obtain from his employer.

Supreme Court Judgements on matters of payment of Retiral Benefits

Decisions and Judgements on Nature of Pensionary and other Benefits

S. N	Name of the Parties	Citation	DECISION AND PRINCIPLE LAID DOWN
1	D.S Nakara v. Union of India	AIR 1983 SUPREME COURT 130	It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful, and un-blemished service.

GLS KALP
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2	Devoki Nandan Prasad v. Union of India	AIR 1971 SUPREME COURT 1409	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
3	State of West Bengal v. Haresh C. Banerjee and Ors.	2006 AIR SCW 5076	The Supreme Court recognized that even when, after the repeal of Article 19(1)(f) and Article 31 (1) of the Constitution vide Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20th June, 1979, the right to property was no longer remained a fundamental right, it was still a Constitutional right, as provided in Article 300A of the Constitution. Right to receive pension was treated as right to property.
4	State of Jharkhand v. Jitendra Kumar Shrivastava	AIR 2013 SUPREME COURT 3383	Denying the petitioner, the right to receive pension affects the fundamental Right of the petitioner Article 19(1)(f) and 31(1) of the constitution and as such writ Petition under Article 32 is maintainable.
5	S K Dua v. State of Haryana & Anr	AIR 2008 SUPREME COURT 1077	The SC has held that the claimant can claim interest where ever statutory rules hold the field, and based on administrative instructions wherever they exist. However even in the absence of Statutory Rules or Administrative instructions, the claimant can claim interest by relying on Article 14, 19, and 21 of the Constitution of India.
6	Y.K Singla v. Punjab National Bank	AIRONLINE 2012 SC 469	The SC has ordered the payment of interest on the withheld Gratuity amount for the period withheld i.e., from the date of retirement to the date of payment
7	State of Uttar Pradesh v. Dhirendra pal Singh	AIR 2016 SC 5239	The SC has ordered the payment of interest on the withheld Gratuity amount for the period withheld i.e., from the date of retirement to the date of payment
8	State of Rajasthan v. O P Gupta	2022 LiveLaw (SC) 785	The SC observed that Pension is a lifelong benefit. Denial of it is a continuing wrong. This court cannot be oblivious to the difficulties of retired employee in approaching the Court, which could Include Financial Constraints- Financial rules framed by the Government such as Pension Rules are capable of more interpretations than one, the Courts Should lean towards that interpretation which goes in favour of the employee.

Court decisions on the power to withhold retiral benefits pending conclusion of departmental/ judicial proceedings

1	Union of India v. K V Janaki Raman	AIR 1991 SUPREME COURT 2010	Only in case the charges are framed in judicial proceedings, it can be said that any judicial proceedings are pending against an employee to

			entitle the Department to withhold the pensionary benefits.

It may be seen from the above table that despite the judgements of the Supreme Court being very clear, and questions which have already been settled by courts have been raised time and again. This may be primarily due to the tendency to having an approach of playing safe and avoiding the decision making at the appropriate Level. If the decision makers are conscious of the Supreme Court intent in laying down the law and exhibit sensitivity in their own domain decision making, I believe there is a lot of scope for minimising the litigation and paving the way for expeditious settlement of retiral Dues.

The observations of the Supreme Court of India are worthy of being quoted are reproduced here:

In ***Punjab State Power Corporation Ltd v. Atma Singh Grewal***[4] Hono'ble Supreme Court of India was dealing with a Special Leave Petition in which the Orders of the Division Bench came under Challenge. Both the Single Judge and the Division Bench of Punjab High Court have given orders in favour of the petitioners but despite the same Punjab State power Corporation has still preferred an appeal by filing a Special leave petition before the Supreme Court of India. The Supreme Court of India while disposing of the matter by confirming the Orders of the Division has come down heavily on the authorities for failing to take conscious decisions and filing appeals without proper appreciation of the law and the facts involved in the matter. The relevant para is Reproduced as under

> *"The number of litigations in our country is on the rise, for small and trivial matters, people and sometimes the Central and state government and their instrumentalities like banks nationalised or private, come to court may be due to ego clash or to save the officer's skin. The judicial system is overburdened which naturally causes delay in adjudication of disputes. Mediation centres opened in various parts of our country have, to some extent eased the burden but we are still in the tunnel and the light is far away. On more than one occasion this court has reminded the central government state governments and other instrumentalities as well as to the various banking institutions to take earnest efforts to resolve their disputes at their end. At times, some give and take attitude should be adopted or both will sink. Unless serious questions of law of general importance rise further consideration or equation which affects many persons or the stakes are very high, the court's jurisdiction cannot be invoked for resolution of small and trivial matters. We are really disturbed by the manner in which those type of matters is being brought to Courts even at the level of Supreme Court of India and this case falls in that category".*

[4] SLP No (Civil) 29859/2009

The Allahabad High Court in ***Shripathi Tripathi v. State of UP***[5] had made the following observation:

> *"We may add that after serving the qualified period of service, the employee does not have any other means of livelihood, when he needs them most, other than his dues. It is extremely unjust and harsh to allow a retired employee to wait to receive the dues, and to depend upon his friends, relatives and children. The right to receive retiral dues/terminal dues is closely linked to his right of self-respect, and human dignity, which is included in the right to life under Article 21 of the Constitution of India."*

A close look at these judgements will show that the subject has been approached by the Supreme Court in a very humanitarian way having regard to all the rules and regulations that were framed by the employers from time to time. The approach of the Supreme Court in this very sensitive and critical area of payment of retiral dues appears to have always been driven by the fact of rendering justice to the parties. This leads us to the conclusion that over the period the judgements rendered by the Supreme Court should be the guiding light for the decision makers in processing and settling the retiral dues of the present and future generations from the employee fraternity.

Conclusion and Suggestions

The Primary and Foremost duty an employer owes to the employee at the time of retirement can be nothing more than to ensure and see that the exit is smooth, quick efficient, and done with ideally no controversies or disputes. With the passage of time, and accumulation of loads of wealth of knowledge in the employment sphere, no doubt strides have been made in the settlement of retiral dues. However, this is not to say that we have overcome all issues and problems. The very fact that Courts have to time and again step in and resolve and adjudicate disputes should make us to think by which we can further streamline and improve the process of settlement of retiral dues. A heavy sense of responsibility is writ large in the circumstances on the part of the employers to settle matters expeditiously. It is essential to think of a few principles on which these issues can be handled. They can as well be built into our regulations.

A few principles that come to my mind immediately are Communication of Rules and Regulations, Transparency in decision making and laying down strict timelines for completion of various processes in this regard. An analogy can be drawn by making a reference to Citizen's Charter. Just Like every public office has a citizen's charter displayed in their offices, time has come for preparation and circulation of an employer's duties and responsibilities towards the employee on payment of retiral dues. These are to be in the knowledge of both the Employer and Employee.

1.Updating Employee Records and Personal Details: It has been the experience that in many organisations, the maintenance of personal Records poses several Challenges. The various personal details such as the status of the person, his annual increments, his promotion, leave records need to attain finality before the payment of various

[5] 2023 AHC 179893

Retiral Dues are taken up. In the current era of technological changes, most of the Organisations have been able to address these challenges and are able to have the updated records at the time of retirement. Complexities and complications do arise often due to court orders and other administrative orders that are issued from time to time.

2.Updating of Rules and Regulations Governing payment of Retiral Dues.

3. Application of the rules in the most harmonious way and considering that these are measures of social security, unnecessary delay to be avoided.

4. The prevailing legal position on the subject should be understood and applied in the given context.

5. Any impediments that exist or likely to arise must be dealt with alacrity and disposed of at the earliest.

6. Departmental proceeding wherever they exist are to be taken to their logical conclusion.

7. The existing Legal position that prevail needs to be applied judiciously in case of settlement of dues where Departmental proceedings are under way.

8. Avoiding Unnecessary and unwarranted litigation by filing appeals and cross appeals injudiciously and in an indiscriminate manner.

In the phase of the ongoing economic growth story the country is presently witnessing and the likelihood and probability of the enhancement of the reputation of India Globally, it is only expected that the chieftains and captains of our economy will succeed in making the exit processes smoother and efficient. While our Country has not been able to provide social security like those in Developed economies, primarily due to large population and other reasons, the least that the employers can do is to provide smooth exit at the time of retirement along with all hard earned retiral dues by avoiding unnecessary disputes or appeals/ cross appeals in courts and thereby delay in settlements.

It is my wish that the occasions for the courts to express their concern and anxiety in these matters gets minimised.