

# Employee is Entitled to Interest if Payment of Salary is Delayed !



{A} Even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles

**14, 19 and 21 of the Constitution of India.**

'The man who lies to himself and listens to his own lie comes to a point that he cannot distinguish the truth within him, or around him, and so loses all respect for himself and for others. And having no respect he ceases to love.'

Facade and Lies: A Theme in F. Scott Fitzgerald's The Great Gatsby  
<https://www.cram.com/essay/facade-and-lies-a-theme-in-f/FK6TB92AC>

The judiciary unfolds the façade and lies and pierces the veil to deliver justice.

The courts of law are 'Parens Patriae'; Parent to the nation and have risen time and again to defend the interest of employees.

The decisions clearly bring out that interest on delayed payment of salary and other payouts, is payable.

DATED: 22.03.2017; Madras High Court has also decided: The employer has to pay interest on delayed payment of salary.

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**{B} The claim of Nonpayment, delayed payment of salary, interest or compensation can be made in accordance with enactments, rules, policies that are applicable to establishment and employee.**

The employee should take care that the claim is lodged in time and interest/compensation is duly claimed, in representations, under proper acknowledgment.

e.g;

(a) THE PAYMENT OF WAGES ACT, 1936

STATEMENT OF OBJECTS AND REASONS In 1926 the Government of India addressed local governments with a view to ascertain the position with regard to the delays which occurred in the payment of wages to persons employed in industry, and the practice of imposing fines on them.

<http://labour.nic.in/sites/default/files/ThePaymentofWagesAct1936.pdf>

(b) The payment of Wages (Procedure) Rules, 1937 1

Form A Form of Individual Application [See sub-section (2) of section 15 of the Payment of Wages Act]

3. (1) The applicant's wages have not been paid for the following wageperiod(s) .....(give dates)

5. The applicant prays that a direction may be issued under sub-section (3) of section 15 for –

(a) Payment of delayed wages as estimated or such greater or lesser amount as the Authority may find to be due.

(b) Compensation amounting to .....

[http://pblabour.gov.in/Content/documents/pdf/acts\\_rules/payment\\_of\\_wages\\_rules.pdf](http://pblabour.gov.in/Content/documents/pdf/acts_rules/payment_of_wages_rules.pdf)

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The Authority is free to fix such compensation at the proportionate rate which it may think to be fair and just subject to the maximum of ten times the amount deducted.

Such application can be made by the employed person himself or a legal practitioner or an official of a registered trade union.

The Authority or the Appellate Court can attach the property of an employer pending the disposal of such claim if it is satisfied that the employer is likely to evade payment of any amount that may be ordered to be paid by it. {Section 17A}

**{C} Employees can't be allowed to suffer because of inaction on the part of the employer. Employer must pay interest if payment due to employees is made late by establishment.**

- Whether the delay was intentional or not is immaterial.
- Whether the service contract of the employee provides for payment of interest is immaterial.
- Employer cannot absolve them of the contractual liability of making due payment on due dates, .. in such cases, the respondents need to pay reasonable interest on the due amounts.
- The submission that the writ petition is not the remedy is unacceptable.

1. The petitioner who was in service of respondent no. 5 has filed the present petition under Article 226 and 227 of the Constitution of India and prayed basically for appropriate order or directions to pay Rs. 3,33,518/- being the penal interest at the rate of 16% per annum on the amount of delayed payment of arrears of pay which were due and payable in the year 1989 but were paid in September-1994.

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There is no dispute that the Executive Engineer of the concerned respondent by letter dated 18.08.1994 informed the petitioner that they have drawn the pay fixation arrears with effect from 01.08.1975 to 30.11.1993 for 20 years and thereby directed the Accounts Officer of the respondents at Nagpur to make arrangements for the said payment. The petitioner accordingly received the payment. However, through the proper channel made representation to grant compensation towards interest including for mental torture for 20 years. There is no dispute about the delayed payment as it was withheld for insufficient reasons. There is no material justification to take such time for fixing arrears of the petitioner. On this undisputed position, we are not inclined to accept the submissions of the respondent-Board that no interest is payable without any specific provisions in the service conditions. The late decision taken by the respondents-Officers based on the entries in the Service Book just cannot be the reason to withheld the payment to the employees who admittedly worked at the relevant time. The fact remains that there was delay in making payment of salary and other benefits with or without intention, is immaterial. In our view, in view of the admitted position on record that the payment was not made on due dates according to service conditions, there is no disputed question of facts involved.

7...The payment be made after the calculation within a period of four months from the receipt of the order.

Bombay High Court

Yuvraj Nathuji Rodye vs Dr. J. K on 18 September, 2008

Bench: Anoop V.Mohta, C. L. Pangarkar

**{D} No doubt the Courts have power to award interest on the arrears of salary. But the affected and aggrieved employee should also claim the interest in representations.**

3....The Execution Court failed to appreciate that in those decisions direction for payment of interest had been issued by the Court while granting relief for reinstatement or payment of arrears of salary or pension. None of those

decisions relate to the grant of interest by the Execution Court. No doubt the Courts have power to award interest on the arrears of salary or pension or other amount to which a Government servant is found entitled having regard to the facts and circumstances of the case but that power cannot be exercised by the Execution Court in the absence of any direction in the decree.

State Of Punjab And Others vs Krishan Dayal Sharma on 27 August, 1990

Supreme Court of India

Bench: K Singh, J Verma

**{E} The action of non-payment of interest was arbitrary, unreasonable and violative of Articles 14 and 21 of the Constitution.**

4....All retiral benefits were thereafter given to him between June 11 and July 18, 2002. Thus, according to the appellant though he retired in June, 1998, retiral benefits to which he was otherwise entitled, were given to him after four years of his superannuation.

5. The appellant has stated that, in the aforesaid circumstances, he was entitled to interest on the amount which had been withheld by the respondents and paid to him after considerable delay. He, therefore, made several representations. He also issued legal notice on June 3, 2005 claiming interest at the rate of 18% per annum for delayed payment. He had invited the attention of the Government to Administrative Instructions issued by the Government under which an employee is entitled to claim interest. Even otherwise, the action of non-payment of interest was arbitrary, unreasonable and violative of Articles 14 and 21 of the Constitution.

11...But it also cannot be denied that those benefits were given to the appellant after four years. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well- founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there

are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis.

But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution.

15.... For the foregoing reasons, the appeal is partly allowed. The order passed by the High Court is set aside and the matter is remitted to the High Court for fresh disposal in accordance with law.

S.K. Dua vs State Of Haryana & Anr on 9 January, 2008

CASE NO.: Appeal (civil) 184 of 2008

Supreme Court of India

Bench: C.K. Thakker, D.K. Jain

{F} Division Bench directed the payment of interest for the belated payment of pension, commutation of pension and other retirement benefits.

The Hon'ble Division Bench had followed the dictum of the Hon'ble Supreme Court in S.K.Dua's case referred supra.

It is not in dispute that the petitioner, on revocation of the suspension joined duty on 23.10.1999 and salary to the period of suspension between 08.02.1999 and 22.10.1999 was paid eventually on 13.10.2010, that is, after delay of nearly 11 years. Though it is stated that the delay is due to the administrative reasons, there is no justification for such long delay as already stated.

Before the Tribunal, the first respondent has challenged the order, dated 08.09.1995 passed by the District Collector, Periyar District, Erode and prayed for a consequential direction to the respondents to pay interest at the rate of 18% per annum for the delayed payment of pension, commutation of pension, death-

cum-retirement gratuity, Encashment of Earned leave, General Provident Fund, Special Provident Fund and pay fixation arrears.

6. The contention of the appellant that as per the Government norms, interest can be paid only on Death-cum-Retirement Gratuity, in case of delay and the same cannot be awarded to any other retiral benefits, is not tenable, in view of the decision of the Supreme Court in S.K.Due v. State of Haryana reported in 2008 (3) SCC 44.

7. In view of the judgment of the Supreme Court, it is now well settled that an employee is entitled to interest on belated payment of pension and other retiral benefits, even in the absence of statutory rules/administrative instructions or guidelines and he can make his claim for interest, under Part III of the Constitution, relying on Articles 14, 19 and 21 of the Constitution.

8. In view of the above, we do not find that there is any infirmity in the impugned order. Hence, the Writ Appeal is dismissed.

Writ Appeal No.886 of 2007

The Government Of Tamil Nadu vs M.Deivasigamani on 17 December, 2008

CORAM: THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN and THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Dated: 17.12.2008

**{G} The interest paid in the discretion of the court vested in it under article 226 of the Constitution of India, and it being taxable, was addressed.**

"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that interest amounting to Rs. 1,17,975 received on arrears of salary after grant of higher pay scale by the Punjab and Haryana High Court is not taxable ?"

2. The question of law as reproduced above emanates from the facts that the assessee, an individual, who was at the relevant time District and Sessions Judge, for the assessment year under consideration, had claimed higher pay scale than what was being allowed to him.

7...This contention apparently appears to be incorrect inasmuch as the present is not a case where the assessee might have been awarded interest under a statute consequent upon grant of arrears of salary on account of higher pay scale, but was in fact paid interest in the discretion of this court vested in it under article 226 of the Constitution of India. The grant of interest was in the absolute discretion of the court and so would be the rate of interest in a case of this kind. In such an event, as mentioned above, the Division Bench of this court in Chiranji Lal Multani Mal Rai Babadur (P.) Ltd. 's case [1989] 179 ITR 157, which is based upon Dr. Shamlal Manila's case [1964] 53 ITR 151 (SC) would apply. In view of the discussion made above, the question, as referred by the Tribunal and as extracted above is answered in favour of the assessee and against the Department. No costs.

Commissioner Of Income-Tax vs B. Rai on 19 August, 2003

Punjab-Haryana High Court

Bench: V Bali, J Singh

**{H} All benefits shall get paid from terminal date of service per facts of the matter.**

**Both the petitioners initially staked claim to the following benefits:**

- i) Wage difference for the period from 21.01.1998 to 22.07.1999;
- ii) Interest on Gratuity;
- iii) (i) Final P.F.Amount  
(ii) Interest on P.F. amount.
- iv) Interest on delayed payment of salary;
- v) HRA from 23.09.1992 to 31.04.2002;
- vi) TA bills amounting to Rs.26,000/-;

vii) LTC;

viii) Conveyance Allowance for 33 months.

As such, all the benefits that are required to be paid to the petitioner shall be paid reckoning 30.12.2001 as the terminal date of his service.

**A.Abraham vs The Cement Corporation Of India ... on 20 March, 2014**

**Andhra High Court**

**{ } The employers and their attorney's lie in courts of law but fail to distract, mislead the Courts of Law.**

**The judiciary unfolds the façade and lies and pierces the veil to deliver justice.**

7... Learned counsel for the petitioner contended that the learned Tribunal has wrongly directed payment of interest as there is no provision for payment of interest. It is further contended that in the present case, the interest is not payable on delayed payment and the O.M. dated 05.10.1999 shall apply mutatis mutandis...

11. It is the case of petitioners where they have paid all the pensionary dues of the respondent as directed by learned Tribunal but according to them, no interest to be paid on delayed payment of pension in terms of O.M. dated 05.10.1999.....

12. Taking into consideration the aforesaid Rule, we have observed that this Rule envisages that if the payment of pensionary benefits has been authorized later then the date when payment becomes due, interest would be paid provided that such delay shall not be due to the government servant who retired from service and entitled to such benefits. Hence, we therefore hold that the learned Tribunal has rightly awarded 9% interest on the delayed payment of pension and other dues as per Rules.

UNION OF INDIA AND ANR. Versus GIR RAJ.

+ W.P.(C) 7719/2015

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of judgment: 14.08.2015

<http://labour.nic.in/sites/default/files/ThePaymentofWagesAct1936.pdf>

**{J} The employer has to pay interest on delayed payment of salary.**

The petitioner, who was working as Junior Engineer at the Kalayarpatti Panjayat, was transferred to Aruppukottai on 16.11.1998. On receipt of the transfer orders and after being relieved from Kalayarpatti, the petitioner went on medical leave and while he was on medical leave, the District Collector, Virudhunagar, by order, dated 08.02.1999 placed the petitioner under suspension pending enquiry in certain charges. The petitioner challenged the order of suspension before the Tamil Nadu Administrative Tribunal in O.A.No.4303 of 1999. The Tribunal allowed the said O.A., on 11.08.1999, thereafter the petitioner joined duty at Madurai on 23.10.1999. No Departmental action was taken against the petitioner for the delinquencies alleged in the order of suspension, dated 08.02.1999.

2. Thereafter the petitioner was awarded selection Grade and he retired on attaining superannuation in the year 2004. However, the petitioner has not been paid the salary for the period of suspension, i.e., from 08.02.1999 to 22.10.1999. The petitioner had made several representations to the various authorities and after prolonged correspondence and delay, the Superintending Engineer, Madurai directed payment of salary for the suspension period, i.e., from 08.02.1999 to 22.10.1999 to the petitioner on 30.09.2010. The petitioner has claimed interest for the delayed payment of salary and sent his representations dated 04.03.2011 and 03.10.2011. Since there was no response, the petitioner has filed W.P. (MD).No.13641 of 2011 seeking a writ of mandamus, directing the authorities to consider his request for payment of interest for the delayed payment of salary. This Court by order, dated 04.07.2013, directed the authorities to consider the request of the petitioner for interest in accordance with law, within a period of eight weeks from the date of receipt of a copy of that order.

3. Pursuant to the said direction, the request of the petitioner was rejected on 08.11.2013 by the second respondent. Challenging the rejection, the petitioner is before this Court. The only reason that has been given for the rejection of the petitioner's claim is that there is no specific Rule in the Service Rules, which enables payment of interest for the delayed disbursement of salary.

4.....But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution.

6. The Hon'ble Supreme Court has categorically ruled that even in the absence of any Statutory Rules or Administrative instructions with regard to the interest, the concerned Government servant (Employee) would be entitled to interest under Article 14, 19 and 21 of the Constitution of India. Hence, I have no hesitation in allowing the writ petition, quashing the impugned order of the second respondent rejecting the request of the petitioner for payment of interest for a sum of Rs.92,026/- being the salary (SALARY) for the period from 08.02.1999 to 22.10.1999. The Division Bench has granted 10% interest by considering the bank interest that is charged. I deem it fit to direct the second respondent to pay interest on the said sum of Rs.92,026/- for a period from 23.10.1999 to 13.10.2010 at the rate of 10% per annum. Such interest shall be paid within a period of eight weeks from the date of receipt of a copy of this order.

W.P (MD) No.20062 of 2013

B.Thirumoorthy vs The Secretary To Government

Madras High Court

DATED: 22.03.2017

{K} The attorney's of employers and employees pretend to be incorrigible and do not shy from lying within their offices, in various forums, with assumption that employees that are not properly informed can be deterred and subdued from exercising their rights and approaching the authorities, tribunals and courts of law.

The attorney's of employers and employees don't shy from lying in courts also.

In today's modern world the internet has opened the gates to information and every employee should benefit from it and become properly informed.

The employees should remain alert and must not fall into the trap of unscrupulous entities that loiter at various online portals posing as experts to allure unsuspecting querists and deter and fleece them.

The employees must not stop or delay to represent on their grievances under proper acknowledgment.

The employees and their communities, forums, unions must not think twice while approaching to employer and appropriate forums, authorities and submit their representations in time and under proper acknowledgment.

The properly informed employees and their unions and their counsels of unshakable repute and integrity specializing in Labor/service matters having successful track record can defend their interest.



Kumar Doab  
on 22 December 2017



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