

15.12.2020

WPA 11279 of 2016

Court No. 02
Item No. SL - 09
snandy

(DISPOSED OF)

Humayan Biswas

Vs.

The State of West Bengal & Ors.

Ms. Jaya Dutta, Advocate

.....for the Petitioner

Heard the learned Advocate for the petitioner.

This writ-petition has been filed for claiming relief of interest on delayed payment of gratuity under Section 7(3) of the Payment of Gratuity Act, 1972. Petitioner contends that in spite of specific order of this Court dated June 5, 2015 in WP 5805 (W) of 2005 directing the respondent no. 2 to give opportunity of hearing before passing the order, the respondent no. 2 did not grant any opportunity of hearing to the petitioner before passing the impugned order (Annexure P-5) communicating through the forwarding letter dated September 7, 2015. Though it has been recorded in that forwarding letter that hearing was given to the petitioner on October 1, 2015, petitioner has made specific averments in respect of his contention in paragraph 15 of the writ-petition which is reproduced below:-

The petitioner states that on going through the said impugned order the petitioner observed that the Director of Pension recorded that hearing was taken place on 01.10.2015 in the chamber of the Director of Pension which is out and out false, because the Director was not present in the Office and after waiting a long, the Law Officer of the Pension Department, recorded the presence of the petitioner and told the petitioner that next date of hearing will be communicated to him but no such communication was ever been issued and/or any hearing took place and the Director of Pension according to his own whimsically pass the order without hearing the petitioner, although the Hon'ble Justice Subrata Talukdar was pleased to direct the Director of Pension to give an opportunity of hearing

to the petitioner and passed the reasoned order accordingly. The Director of Pension without giving any opportunity passed an impugned order on 20.11.2015 rejecting the prayer of the petitioner for payment of interest on delayed payment of gratuity in utter violence of the provision of Sub-section 3(a) of Section 7 of the Payment of Gratuity Act, 1972.

It has been further contended by the petitioner while passing the order rejecting the claim of the petitioner that respondent no. 2 has not considered the relevant memo and the judgment passed by this Court in WP 1848 (W) of 2015 on August 21, 2015 (*Jagadish Chandra Bhuiya Vs. State of West Bengal*).

This is the second round of litigation. The earlier writ-petition was filed in 2015. The respondent is not in a position to deny the aforesaid allegation of the petitioner.

Considering the submissions of the parties, the impugned order being Annexure P-5, is set aside. The respondent no. 2 is directed to consider afresh the case of the petitioner by passing a reasoned and speaking order and after giving effective opportunity of hearing to the petitioner or his authorized representative, within eight weeks from the date of communication of this order. At the time of passing the fresh order, the respondent no. 2 shall consider the above referred judgment passed in WP 1848 (W) of 2015 and also the contention raised in this writ-petition. After the passing the order the respondent no. 2 shall communicate the order to the petitioner within two weeks thereafter.

With the aforesaid directions the writ-petition being **WPA 11279 of 2016** is disposed of.

(Md. Nizamuddin, J.)

