

16.04.2021.
Item no. 270.
Court No.13
pk

**W.P.A. No. 9011 of 2021
(Through Video Conference)**

**Sri Netai Kumbhakar
Versus
The Durgapur Projects Limited & Ors.**

Mr. Ayan Banerjee,
Mr. Suman Banerjee,
Mr. Soumya Choudhury,
Ms. Debasree Dhamali

... for the petitioner.

Mr. Sujit Sankar Koley

...for the Durgapur Projects Limited.

The writ petitioner is a retired employee of the Durgapur Projects Limited. He claims interest on delayed payment of gratuity and leave encashment. He relies upon a decision of a Division Bench of this Court in ***Krishna Prosad Chatterjee Vs. The Durgapur Projects Limited and others*** dated 11.03.2020 passed in ***MAT 108 of 2020***. He submits that the Division Bench had ordered the interest on delayed payment of gratuity to be paid @ 7 per cent per annum.

In so far as leave encashment is concerned, the Division Bench considered the precarious financial condition of the Durgapur Projects Limited and has ordered that if leave salary is released to the petitioner within six weeks, the same will not attract any interest. It was further found in the said case that

leave salary was already paid to the petitioner therein. Hence, no further interest was awarded.

Counsel for the petitioner, Mr. Ayan Banerjee relies upon an unreported decision of the Hon'ble Supreme Court in the case of ***The State of Andhra Pradesh & Another – Vs. – Smt. Dinavahi Lakshmi Kameswari*** dated 8th February, 2021 passed in Civil Appeal No. 399 of 2021 where interest at the rate of 6 per cent and all terminal benefits was ordered. The Supreme Court reduced 12 per cent interest awarded by the Andhra Pradesh High Court, to 6%, given the poor financial condition of the State. Further reliance is also placed at paragraphs 13 to 17 of a decision of the Hon'ble Supreme Court in the case of ***S.K. Dua – Vs. – State of Haryana & Another*** reported in **(2008) 3 Supreme Court Cases 44**. It was held in the said decision that interest is always payable on delayed payment of terminal benefits.

It is now well-settled position that an employee is always entitled to claim interest on delayed payment of terminal benefits. Post superannuation, an employee does not have any salary or money to run his family and daily needs. Terminal benefits accrue as a matter of right to an employee and are not a bounty. Any delay in payment of terminal benefits has disastrous and serious consequence on an employee.

Considering the dicta of the Hon'ble Supreme Court in the aforesaid two decisions, namely,

Kameswari decision (supra) and **S.K. Dua decision (supra)**, this Court is of the view that the petitioner is indeed entitled to interest on delayed payment of terminal benefits including gratuity and leave encashment.

However, while ordering interest, due regard must be had to the financial condition of the employer.

Admittedly, the Durgapur Projects Limited is in a very precarious financial condition. The transmission business of the said company has been taken over by the West Bengal State Electricity Transmission Company Limited. The distribution business of the Durgapur Projects Limited has been transferred to the WBSEDCL.

Considering the above and the **Kameswari decision (supra)**, this Court awards six per cent interest to the petitioner on both delayed payment of gratuity and leave encashment.

The period for which the interest is to be applied on the sums received by the petitioner under the aforesaid two heads would be from the date of superannuation till the date of actual receipt of the aforesaid two benefits.

Let such payment be made to the petitioner within 2 months from the date of receipt of a copy of this order.

With the aforesaid observations, the instant writ petition shall stand disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(*Rajasekhar Mantha, J.*)