22.06.2021
Court No. 19
Item no.09
CP

WPA 10065 of 2021

Dulal Chandra Das
vs.
The Durgapur Projects Limited & ors.

(via video conference)

Mr. Siddhartha Sarkar
Mr. Hirak Ray

….for the petitioner.

Mr. Sujit Sankar Koley
Mr. Suprio Ranjan Saha
Mr. S. K. Mukherjee

….for the respondents.

The writ petitioner joined Durgapur Projects Limited, a Government of West Bengal Enterprise, on February 1, 1991. Durgapur Projects Limited is a State under Article 12 of the Constitution of India. The petitioner has alleged that the delay on the part of the employer in paying the retirement benefits along with leave encashment, etc. entitles the petitioner to claim interest on all retiral benefits on account of delayed payment. The right of retired employees to get interest on account of delayed payment of pension, gratuity and other retirement benefits was elaborately discussed and upheld by the Hon'ble Apex Court in the matter of S.K. Dua vs. State of Haryana & Anr. reported in (2008) 3 SCC 44. Such right was declared by the Hon'ble Apex Court to be a constitutional right.

The petitioner retired from service on January 31, 2017. The gratuity and leave encashment were released on July 12, 2018. The petitioner made a representation for payment of interest on account of such delayed payment. The representation of the petitioner was not responded to.

Aggrieved, the petitioner has moved this Court under Article 226 of the Constitution of India and prayed for interest on delayed payment of gratuity and leave encashment. Reliance has been placed on a decision of the Hon'ble Apex Court in the matter of The State of Andhra Pradesh & Anr. vs. Smt. Dinavahi Lakshmi Kameswari in Civil Appeal No. 399 of 2021. The Hon'ble Apex Court at paragraph 14 of the said judgement has categorically held that interest on delayed payment of any salary due to any employee was payable by the employer. Paragraph 14 of the said judgment is quoted below:

> "14. The direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. likewise, it is well settled that the payment of the pension is for years of past service rendered by the pensioners to the State. Pensions are hence a matter of a rightful entitlement recognised by the applicable rules and regulations which govern the service of the employees of the State. The State Government has complied with the directions of this Court for the payment of the outstanding dues in two tranches. In so far as the interest is concerned, we are of the view that the rate of 12% per annum which as been fixed by the High Court

> should be suitably scaled down. While learned counsel for the respondents submits that the award of interest was on account of the action of the Government which was contrary to law, we are of the view that the payment of interest cannot be used as a means to penalize the State Government. There can be no gain saying the fact that the Government which has delayed the payment of salaries and pensions should be directed to pay interest at an appropriate rate."

Mr. Sarkar, further places reliance on an order of this Court by which the Durgapur Projects Limited, the respondent, employer of the petitioner herein, had been directed to pay interest on leave encashment as also gratuity at the rate of 6% per annum from the date of retirement to the date of actual payment.

Mr. Koley and Mr. Saha, learned Advocates who appear on behalf of the respondents draw the attention of this Court to an order of the Division Bench of this Court passed in MAT No.108 of 2020 dated March 11, 2020. According to Mr. Koley, although the Division Bench granted interest on gratuity but did not award interest on leave encashment. Mr. Koley further contends that the financial condition of the respondent-company is in a precarious condition and award of interest on gratuity and leave encashment would cause them financial hardship. It is next contended that the petitioner has moved this Court belatedly, much after the payments were received and accepted.

I have heard the contentions of the respective parties.

The decision of the Hon'ble Division Bench was passed prior to the decision of the Hon'ble Apex Court. According to the Apex Court's decision, a retired employee has the right to grant of interest on delayed payment of salary and pension. Thus, the Hon'ble Apex Court has decided the issue and in such event, the Hon'ble Apex Court's judgment shall have an overriding effect over the Division Bench Judgment. Next, another learned Judge sitting in co-ordinate jurisdiction has already passed an order in favour of a similarly situated employee of the same company, who is a respondent herein, thereby granting 6% interest on account of delayed payment of interest and also leave encashment. Such order has been accepted by the respondent.

The Hon'ble Apex Court has already held in S.K. Dua (supra) that an employee had a right under Articles 14, 19 and 21 of the Constitution of India to claim interest on delayed payment of retirement benefits. Relevant paragraph is quoted below:-

> "14. 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 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. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of 'bounty' is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

Leave encashment is also a retirement benefit, which is granted to an employee in lieu of service rendered. All retirement benefits are paid in recognition of the sincere and long drawn service rendered by an employee to the employer. It is neither a charity nor gratis granted by an employer.

Moreover, the doctrine of Comity of Courts persuades this Court to accept the decision of the co-ordinate Bench dated April 16, 2021 passed in WPA No.9030 of 2021. The reasons supplied by His Lordship is accepted. The order of the Hon'ble Apex Court has been considered and the order of the Division Bench has been distinguished.

The Hon'ble Apex Court had observed in Neon Laboratories Ltd. v. Medical Technologies Ltd, reported in (2016) 2 SCC 672 that a Court must give due deference to the enunciation of law made by another Court unless the reasons assigned by such Court giving the decision are contrary to law or incomprehensible. A similar view was taken in the decision of Nirendra Kumar Saha v. Steel Authority of

India Ltd reported in 2009 SCC OnLine Cal 619, where it was held that the doctrine of Comity of Courts demanded that Courts should adopt a consistent and uniform approach towards administration of justice by taking adequate care to ensure elimination of conflicting orders.

In Union of India v. Tarmen Singh reported in (2008) 8 SCC 648, the Apex Court held that in spite of delay in filing an application for grant of interest on gratuity and order retirement benefits, the delay would not be fatal and shall not take away the claim of the petitioner in getting interest on delayed payment.

Under such circumstances, this Court does not find any reason to differ from the order of this Court passed on an earlier occasion in favour of similarly situated employees of the same respondent company.

This writ petition is disposed of with a direction upon the respondents to pay 6% interest on the gratuity as also the leave encashment benefits. Such payment shall be made under separate heads for gratuity and leave encashment, payable from the next day of the date of superannuation up to the date of payment.

Having considered the financial condition of the respondent company this Court directs that the payment should be made within a period of six months from the date of communication of this order.

With the above observations, this writ petition is disposed of.

All parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)