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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 11840 of 2021

Hare Krishna Karmakar
Vs.
The Durgapur Projects Limited & Ors.

Mr. Siddhartha Sarkar,
Mr. Hirak Roy
... For the petitioner.

Mr. Sujit Sankar Koley,
Mr. S. R. Saha
... For the respondents.

The petitioner was an employee in Durgapur Projects Limited (in short "DPL"), the respondent no.1. The petitioner retired from service on 31st January, 2016. The petitioner on his retirement was entitled to payment of gratuity and an amount on account of leave salary aggregating to Rs.12,60,407/-. This figure is not in dispute. The petitioner was paid this amount on 1st July, 2017. The date of payment is also not in dispute. The petitioner says that there has been a delay of about 17 months in making of the said sum of Rs.12,60,407/-on account of gratuity and leave salary. The petitioner, therefor, is entitled to interest for delayed payment of gratuity as per the provisions of Section 7(3A) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act") and interest on the same rate on leave salary since the same is part of the retiral benefits.

The respondents say that the delay in payment was not intentional but due to the financial stringency of the DPL.

The financial stringency on the part of the employer (respondent no.1) cannot be a ground in delaying the payment of retiral benefits to a retired employee of the respondent no.1 which becomes due and payable immediately upon the retirement of the said employee. Section 7(3A) of the said Act provides for payment of interest for delay in paying the amount on account of gratuity which as per the last circular is at the rate of 10 per cent per annum. This is as such the statutory rate.

The respondents say that the rate on account of delayed payment has been considered by the Division Bench of this Court as also by the Hon'ble Supreme Court.

The respondents have relied upon a judgment and order of a Division Bench of this Court passed on 11th March, 2020 in MAT 108 of 2020 with CAN 1249 of 2020 with CAN 1250 of 2020 (Krishna Prosad Chatterjee v. The Durgapur Projects Limited & Ors.). It appears from the said judgment and order that by the order impugned therein, the learned Single Judge while disposing of the writ petition had allowed interest on delayed payment of gratuity and leave salary at the rate of 5 per cent per annum by an order dated 15th November, 2019.

In the case before the Division Bench, the employee of DPL must have retired prior to 15th November, 2019 being the date of the order of the learned Single Judge and there was a delay in paying him the gratuity and the amount on account of leave salary. The Division Bench after taking note of the facts allowed 7 per cent interest on gratuity from the date of accrual till the date of actual payment. So far as the leave salary is concerned, the Division Bench directed payment of the same within six weeks from the date of the order passed by the Division Bench and if the same was paid within such time frame, the amount on account of leave salary will not attract any interest.

I am told that the issue as to payment of leave salary is pending before the Hon'ble Supreme Court at the instance of Krishna Prosad Chatterjee, the employee, as no interest was allowed by the judgment and order of the Division Bench dated 11th March, 2020 on the sum being paid within the time frame.

On a perusal of a judgment of the Hon'ble Supreme Court reported in 2021 SCC Online SC 237 = 2021 (3) SCALE 42 (The State of Andhra Pradesh & Anr. v. Smt. Dinavahi Lakshmi Kameswari) relied upon by the respondents, it appears that the Hon'ble Supreme Court was considering the issue of deferred salary and pension during the pandemic for which the Andhra Pradesh High Court had directed payment of interest at the rate of 12 per cent per annum. The Supreme Court taking note of the pandemic situation reduced the rate of interest from 12 per cent to 6 per cent both in case of deferred salary as also in the case of deferred payment of pension.

This judgment, so far as deferred payment of salary does not apply to the instant case but so far as it relates to deferred payment of pension, it has some application as retiral benefits and pensionery benefit are either interlinked or the same. Even the issue of deferred payment of pension in the case before the Hon'ble Supreme Court does not match with the facts of the instant case where retiral benefits fell due on 1st February, 2016 i.e., much before 31st March, 2020 when the first circular was issued by the Andhra Pradesh Government owing to the pandemic.

The respondents have also referred to few orders passed by different learned Judges of this Court sitting singly. In one of such orders passed on 22nd June, 2021 in WPA 10092 of 2021 (Ajit Kumar Chakraborty v. The Durgapur Projects Limited & Ors.), a learned Single Judge after considering the judgment of the Hon'ble Supreme Court of India reported in (2008) 3 SCC 44 (S.K. Dua v. State of Haryana & Anr.) which held that an employee has a right under Articles 14, 19 and 21 of the Constitution of India to claim interest on delayed payment of retirement benefits and the judgment of the Hon'ble Supreme Court in Smt. Dinavahi Lakshmi Kameswari (supra) and the Division Bench judgment of this Court in Krishna Prosad Chatterjee (supra) allowed 6 per cent interest on delayed payment of gratuity and leave salary by agreeing with another Single Bench judgment dated 16th April, 2021 passed on WPA 9030 of 2021.

The fact remains that the petitioner was deprived of his dues and DPL having not paid the same in time had derived benefit out of such money. The respondents, therefor, is liable to compensate the petitioner for the delay in making payment of his retiral benefits by paying interest on the principal sum for the delayed period. This is also statutorily approved. Even delay in approaching the Court for grant of interest on gratuity and other retiral benefits has been held by the Hon'ble Supreme Court to be not fatal in Union of India v. Tarmen Singh reported in (2008) 8 SCC 648.

Considering the judgment in Smt. Dinavahi Lakshmi Kameswari (supra), Krishna Prosad Chatterjee (supra) and the order of the learned Single Judge referred to above, an acceptable formula can be culled out by consent of the parties. The petitioner agrees to receive interest on account of delayed payment of gratuity and leave salary at the rate of 6 per cent per annum and the respondents agree to pay such interest both on account of delayed payment of gratuity and leave salary. The respondents also undertake to pay the interest on account of delayed payment of gratuity and leave salary from 1st February, 2016being the date of accrual till 1st July, 2017, being the date of actual payment at the rate of 6 per cent per annum within six weeks from date.

On the basis of such consensus, the respondent no.1 is directed to pay interest to the writ petitioner at the rate of 6 per cent per annum on Rs.12,60,407/-being the amount on account of gratuity and leave salary calculated on and from 1st February, 2016 till 1st July, 2017 within a period of six weeks from the date of communication of a photostat certified copy of this order and in default statutory rate of 10 per cent will be attracted on the entire amount from 1st February, 2016 to 1st July, 2017.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted by the respondents.

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

(Arindam Mukherjee, J.)