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26.11.2021
Ct. No.23
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 13200 of 2021

Subhash Chandra De
Vs.
The State of West Bengal & Ors.

Mr. Ardhendu Nag
... for the petitioner.
Mr. Srinath Singha Roy,
Ms. Sudipa Roy
....for the State.
Mr. Amal Kumar Sen, AGP,
Mr. Sabyasachi Mondal
... for the CSTC.

Affidavit of service filed in Court today is taken on record.

The petitioner retired from service of Calcutta State Transport Corporation (in short "CSTC") on 31st January, 2008. At the time of his retirement a criminal case was pending as against the petitioner. In view of such pendency of the criminal case, the petitioner was paid the provident fund dues amounting to Rs.4,28,727, but was not paid the gratuity and amounts on account of leave salary and difference of pay and allowance bill during the period of his suspension in view of the pendency of the criminal case. The petitioner was acquitted from the criminal case by a judgment and order dated 31st October, 2018 delivered by the learned Judge, 24-Parganas (South), 1st Special Court, Alipore in Special Case No.06 of 2004. Despite such acquittal, the gratuity, the amounts on account of leave salary and difference of pay and allowance bill for the period of his suspension were not released though the petitioner had made a representation on 5th February, 2019. The petitioner approached this Court for release of the said amounts with interest by filing a writ petition being, W. P. No.15142 (W) of 2019. The said writ petition was disposed of by an order dated 14th August, 2019 by directing the Managing Director of CSTC to consider the petitioner's representations within a period of eight weeks from the communication of a copy of the said order by passing a reasoned order and to communicate the same to the petitioner. A direction was also given to the extent that in the event the Managing Director of CSTC found that any amount was due and payable to the petitioner on account of retiral dues, the disbursement of such amount should be made within four weeks from passing of the reasoned order. The Managing Director of CSTC, being the respondent no.3 in the instant writ petition, has considered the petitioner's representation for release of his retiral benefits in terms of the order dated 14th August, 2019 passed in W. P. No.15142 (W) of 2019.

The respondent no.3 has come to a finding that a principal sum of Rs.1,85,040/- was due and payable to the petitioner on account of gratuity. A sum of Rs.7,163/- was deducted from the said sum of Rs.1,85,040/- on account of excess payment of gratuity and a sum of Rs.1,77,877/- was made over to the petitioner on or about 11th March, 2020 as gratuity. Apart from the gratuity amount, leave salary amount of Rs.49,944/- and a sum of Rs.2,00,906/- on account of difference of pay and allowance bill during the suspension period from 21st June, 2001 till January, 2006 were also paid.

The petitioner says that a total sum of Rs.4,28,727.00 (Rs.1,77,877.00 + Rs.49,944.00 + Rs.2,00,906.00) was receivable by the petitioner immediately upon retirement, but the same was kept withheld till disbursement on or about 11th March, 2020. The petitioner claims interest on the said total sum of Rs.4,28,727/- @ 10% per annum from the date of his retirement till the date of actual disbursement.

On behalf of CSTC, it is submitted that the amount on account of gratuity was withheld due to pendency of the criminal case, in which the petitioner was acquitted only on 31st October, 2018. CSTC as a employer was not at fault in withholding the amount on the aforesaid three heads because all other retiral benefits apart from the same had been paid to the petitioner on his superannuation. These amounts were kept withheld specifically for the pendency of the criminal case. The petitioner, therefor, if at all is entitled to any interest, shall be from the date of his acquittal, that is, 31st October, 2018 till its actual disbursement and not from the date of his retirement. It is also submitted on behalf of CSTC that the petitioner has not disclosed about the previous writ petition, being W. P. 15142 (W) of 2019 and the order passed therein and as such, the petitioner has approached this Court with unclean hands. The petitioner is, therefor, not entitled to the reliefs claimed in the writ petition.

The petitioner should have disclosed about the previous writ petition and the order passed therein in the instant writ petition. However, non-disclosure of such particulars does not amount to suppression of fact as such fact on being disclosed will not disentitle the petitioner from the reliefs claimed in the instant writ petition in view of the admitted facts. It is not in dispute that the three sums aggregating to Rs.4,28,727/- was disbursed only on or after 11th March, 2020, when the petitioner retired from service on 31st January, 2008. It is also not in dispute that the petitioner could have received the said sum had he retired from service without the criminal case being pending as against him. Once the petitioner has been acquitted from the criminal case, he became entitled to receive the said sum. Any delay in paying the same will attract interest from the date of retirement, that is, 31st January, 2008. Looking into the matter from a different angle, CSTC has derived benefit out of the money which was to be paid to the petitioner on his retirement, but was ultimately paid on or after 11th March, 2020. The petitioner was deprived of the benefit of money for all these period. CSTC is, therefor, required to compensate the petitioner by paying interest for the interregnum period between 1st February, 2008 and 11th March, 2020.

The Payment of Gratuity Act, 1972 provides for payment of interest for delayed payment of the gratuity amount. The interest as prevailing in terms of the circular is 10% at present. So far as the amount on account of other two heads, one of which falls under the category of retiral benefits and other being the difference of pay and allowance bill during the suspension period from 21st June, 2001 to January, 2006 also attracts interest. The petitioner is also entitled to interest on such sums. In fact, the difference of pay and allowance bill during the suspension period from 21st June, 2001 to January, 2006 was required to be paid to the petitioner immediately after January, 2006, but the same was not paid even on his retirement.

I also find no justification in withholding the money of the petitioner by CSTC on account of leave salary and difference of pay and allowance bill during the suspension period from 21st June, 2001 to January, 2006 on his retirement.

Considering the matter as a whole and by balancing the scale in the light of the judgments of this Court as also the Hon'ble Supreme Court, I think justice will be sub-served if CSTC is directed to pay interest @ 6% per annum on the aggregate sum of Rs.4,28,727/- from 1st February, 2008 till 11th March, 2020 by 10th January, 2022, failing which the interest rate for the entire period and on the unpaid sum, if any, will become 10% simple interest per annum.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of 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.)