ORDER SHEET

WPO 289 of 2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

DINESH HAZRA
VS.
THE STATE OF WEST BENGAL & ORS.

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 16th August, 2021.

Mr. Debdutta Basu, Advocate for the petitioner.
Mr. K. P. Santra, Advocate for proforma respondents.
Ms. Chaitali Bhattacharya, Mr. Subhendu Roychoudhury,
Advocates for State respondents.
Ms. Deblina Chattaraj, Adv. for WBTC Ltd.

The Court : The petitioner is the son of a deceased employee of Calcutta Tramways Corporation (1978) Ltd. (in short CTC) which is now known as West Bengal Transport Corporation Ltd. (in short WBTC). The petitioner's father, namely, Subhashis Hazra died on 4th November, 2011 while he was still in services of CTC. The heirs of the deceased employee made an application on 30th December, 2011 for release of his benefits but the request made in the said application was never adhered to. Subsequently two further applications were made and ultimately the principal amount on the different heads of the benefits available to the deceased employee was released on 11th May, 2021. Although it was submitted by CTC that the application initially made for release of the benefits of the deceased employee was not in form but the respondent nos. 2, 3 and 4 have not been able to produce any document despite being afforded an opportunity to demonstrate that either the petitioner or any of the heirs of the deceased employee (respondent nos. 6, 7 and 8) were communicated either immediately or within a reasonable period of time that the application for release of the benefits made on 30th December, 2011 was not in form. The Advocate for respondent nos.2, 3 and 4 says that the petitioner was intimated verbally that the application was not in form. In absence of any contemporaneous document showing such verbal intimation such plea cannot also be accepted.

The Advocate for the respondent nos.2, 3 and 4 produces three letters respectively dated 18th August, 2020, 30th September, 2020 and 1st April, 2021 to support the contention of her clients that the petitioner was intimated that the applications made for release of the benefits of the deceased employee were not in for. These three letters are taken on record.

It appears that the order in the petitioner's previous writ petition being W. P. 561 of 2019 for release of the benefit of his deceased father was passed on 6th January, 2020. All the three letters produced by the respondent nos.2, 3 and 4 are subsequent to the passing of the order dated 6th January, 2020 and as such are of no consequences or help the said respondents in any manner whatsoever. The contention of the respondent nos.2, 3, and 4 that the application not being in form was made known to the petitioner is, therefore, rejected.

It further appears from the order dated 6th January, 2020 that the merit of the claims made by the petitioner including payment of interest was not considered. The respondents were only directed to consider the petitioner's prayer for release of the amount. In such circumstances the point taken by the respondent no.1 that there was a prayer for interest in the previous writ petition which was not allowed as a consequence whereof the claim for interest is hit by the provisions of *res judicata* cannot also be accepted.

The fact remains that the petitioner and/or the legal heirs of the deceased employee Subhashis Hazra became entitled to the benefits immediately after his death which occurred on 4th November, 2011. There has been a long delay of about ten years in paying the benefits of the deceased employee. The respondent nos.2, 3, and 4 have used, utilised and derived benefits out of the money which they were liable to pay but remained with them for about ten years. The law is now well settled that an employee and/or his/her legal heirs are entitled to claim the benefits available to the said employee by invoking the rights available under Article 14, 19 and 21 of the Constitution of India. The right of the legal heirs of a deceased employee has to be considered in the similar lines. One can refer to the judgment of the Hon'ble Supreme Court reported in 2008 (3) SCC 44 (S. K. Dua vs. State of Haryana) in this regard. So far as gratuity is concerned, there is a statutory enactment under Section 7A(3) of the Payment of Gratuity act, 1972 for payment of interest in case of delay in paying the said amounts. The rate of interest as per the prevailing circular is 10%. The other dues of the deceased employee included under the heads of provident fund and leave salary/leave encashment also fall under the same category of benefits available to the deceased employee. The respondent nos.2, 3 and 4 are, therefore, liable to pay interest to the petitioner for the delay in paying the amounts being the benefits available to the deceased employee. The respondent nos.2, 3, and 4 and each one of them are directed to pay interest on the principal sum of Rs.8,08,768/- which has already been disbursed to the petitioner and the proforma respondent nos.6, 7 and 8 on 11th May, 2021. The said sum of Rs.8,08,768/- will carry interest at the rate of 7% per annum from 5th November, 2011 till 10th May, 2021, which the said respondent nos.2, 3 and 4 shall be liable to pay within a period of six weeks from the date of service of a copy of this order. In the event the respondent nos.2, 3 and 4 are unable to pay the interest to the petitioner and the proforma respondent nos.6, 7 and 8 within the timeframe provided, the interest rate will increase to 8% and the said respondents have to pay at such rate for the period of delay as indicated hereinabove. The parties shall act on a server copy of this order without insisting upon production of a certified copy thereof.

Nothing further remains to be adjudicated in the writ petition. The writ petition is accordingly disposed of

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

(ARINDAM MUKHERJEE, J.)

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