29.03.2022
Sl. No.34
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 2668 of 2022

Smt. Manasi Biswas & Anr.
Vs.
The Durgapur Projects Limited & Ors.

Mr. Ayan Banerjee,
Mr. Suman Banerjee
…for the petitioner.
Mr. S. S. Koley
….for DPL.

The petitioners are respectively the widow and the son of Subrata Biswas, a former employee of Durgapur Projects Limited (in short DPL), who retired from the services on 31st October, 2018 and died on 24th March, 2020. The petitioners say that they are the only legal heir and heiress of the deceased employee. The petitioners, being the only legal heir and heiress of the deceased employee, have been paid Rs.20,00,000/- on account of gratuity on 19th December, 2020, after a period of almost 26 months from the date of superannuation of the deceased employee. The petitioners further say that the amount due on account of leave salary of the deceased employee has not been paid. The petitioners, therefor, are 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") since the same is part of the retiral benefits of the deceased employee and comprises the estate left behind by him.

The petitioners have submitted a memo/order dated 24th August, 2020 passed by the respondent no.3 wherefrom it appears that the petitioners are entitled to payment of salary equivalent to 280 days Earned Leave lying in the credit of the deceased employee on the date of his retirement. This document is not annexed to the writ petition, but produced subsequently. Since there is no dispute as regard to this document, the same is taken on record. DPL is liable to pay leave salary equivalent to 280 days Earned Leave calculated on the basis of the applicable salary of the deceased employee to the petitioners with interest from the date of retirement of the deceased employee till actual payment.

The issues involved in the instant writ petition are squarely covered by a recent judgment and order of this Court dated 9th August, 2021 passed in WPA 11485 of 2021 (Kajal Pal v. The Durgapur Projects Ltd. & Ors.). The consensus between the parties as was in case of Kajal Pal (supra) is also there in the instant case.

The employee concerned died prior to expiry of three years from the date of retirement and the petitioners have approached this Court on 14th February, 2022, i.e. within two years from the date of death of the employee. Keeping in mind the pandemic in between there is no delay or laches on the part of the petitioners in approaching the Court.

This writ petition is as such disposed of on the similar lines as in Kajal Pal (supra), which are as follows:-

The respondent no.1 is directed to pay interest to the writ petitioners at the rate of 6 per cent per annum on Rs.20,00,000/- being the amount on account of gratuity calculated on and from 1st November, 2018 till 19th December, 2020, a sum equivalent to salary for 280 days calculated on the basis of the last drawn salary of the deceased employee with interest @ 6 per cent per annum from 1st November, 2018 till actual payment, within a period of six months from the date of communication of a photostat certified copy of this order and in default, statutory rate of 10 per cent as in case of gratuity will be attracted on the entire amount from 1st November, 2018 till 19th December, 2020.

Nothing further remains to be adjudicated in this writ petition.

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.**)