IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 4232 of 2015

Paresh Nath Samanta

Versus

The State of West Bengal & Ors.

For the petitioners	:	Ms. Susmita Dey (Basu) .....Advocate
For the CSTC	:	Mr. Amal Kr. Sen Mr. Sabyasachi Mondal .....Advocates
For the State	:	Mr. Bhaskar Prasad Baiysa Mr. Tarak Karan ......Advocates
Heard lastly on	:	27.06.2022
Judgment on	:	04.07.2022

Jay Sengupta, J.:

1. This is an application challenging an order dated 12.11.2014 passed by the Managing Director, Calcutta State Corporation, thereby rejecting the petitioner's prayer for payment of interest on 60% of the gratuity and leave salary, the due arrears in terms of ROPA, 2009 and refund of the deducted amount in connection with purported over payment.

2. The petitioner joined the respondent no. 3, a statutory corporation, as an Assistant Security Officer on 05.10.1983. By an office order dated 29.03.1997, the petitioner was later appointed as a Discipline Officer. Subsequently, he received notice of final superannuation under a Memo dated 20.08.2010. On 29.11.2011 a Single Bench of this Court restrained the respondents therein from making any payment towards honorarium, salaries, perquisites of those who took active part in the affairs management and distribution of fund of the respondent corporation until and unless gratuity and other settlement dues are paid to the petitioner. By an order dated 14.02.2012, a Division Bench of this Court directed the appellant corporation to release 60% of the total retiral benefits to the petitioner within 7 days from the receipt of the amount from the State Government. On 15.03.2012 the petitioner received 60% of the retiral dues with interest. On 21.06.2012 a Single Bench of this Court directed the respondent no. 1 therein to release the terminal benefits with 7% interest per annum within four weeks. Subsequently, the petitioner received the remaining 40% retiral dues with 7% interest per annum. However, certain sums were deducted from the retiral benefits on the purported ground of over payment. On 14.06.2013 the petitioner made an application under Right to Information Act for seeking information. It was furnished on 17.07.2013. Thereafter, on 13.08.2013 petitioner made a representation before the respondent no. 3

requesting him to pay interest on delayed payment of 60% of his terminal benefits and to release the amount recovered from the terminal benefits with interest. In 2014 a Single Bench of this Court directed the respondents to consider the petitioners representation dated 13.08.2013. By the impugned order the Managing Director rejected most of the petitioner's prayers.

3. Ms. Susmita Dey (Basu), learned counsel appearing on behalf of the petitioner submitted as follows. First, before the superannuation of the petitioner, ROPA 2009 had become applicable. Therefore, the petitioner was entitled to arrears in terms of ROPA 2009. Secondly, the immediate payment of 60% of the gratuity and leave salary as directed by a Division Bench of this Court was meant to provide an immediate relief to the petitioner. There, the question of payment of interest was neither considered nor decided. However, by the subsequent order passed by a Single Bench of this Court it was categorically held that the petitioner was entitled to receive due arrears with an interest of 7 % per annum. Thus, this would cover the earlier payment of 60% of the dues made to the petitioner. Thirdly, reliance was placed on a decision of special Bench of the Hon'ble Apex Court in the case of State of Punjab and others Rafiq Masih (White Washer), (2014) 8 SCC 883 and it was submitted that after superannuation of an employee no sum could be deducted from his retiral dues. Therefore, the sum that was deducted from the retiral dues of the present petitioner have to be refunded forthwith.

4. Mr. Amal Kr. Sen, learned senior counsel appearing on behalf of the CSTC submitted as follows. Arrears in terms of ROPA 2009 totalling to Rs.

35,126/- had already been paid to the petitioner on 05.05.2016. So far as the interest due on arrears was concerned, the respondent disputed that any interest was payable for 60% of the dues directed to be paid by the Division Bench of this Court as there was no such direction regarding payment of interest of the same. Regarding the decision in Rafiq Masih (supra), it was submitted that the ratio of the said decision would not have a retrospective effect on the facts of the present case.

5. Mr. Tarak Karan, learned counsel appearing on behalf of the State broadly agreed with the submissions made on behalf of the CSTC.

6. At this stage learned counsel for the petitioner, after taking instructions from her client, submitted that the arrear dues in terms of ROPA 2009 had in fact been paid to the petitioner.

7. I heard the learned counsels appearing on behalf of the parties and perused the writ petition.

8. The first dispute concerning payment of arrear dues in terms of ROPA, 2009 does not exist any more. Therefore, the said issue need not be dealt with.

9. As regards the payment of interest on retiral dues, it is a settled position of law that if there is a delay in payment of retiral dues to a former employee which had taken place for no fault of the latter, a reasonable sum should be paid to the former employee by way of interest. It appears from the decision of the Division Bench of this Court that the direction to make an immediate payment of 60% of the arrears was given in order to provide an immediate succour to the petitioner. There the question of interest was neither considered nor decided. As such, there was no harm in the petitioner accepting such payment without prejudice. It further appears that a Single Bench of this Court held that the petitioner was entitled to receive interest on the arrear dues. By that time only 40% of the arrears remained due. That is why a specific direction was given to pay the arrear dues along with interest at the rate of 7% per annum. But, this did not mean that such interest would not be paid on the rest sum of 60% of the dues. In fact, from the directions passed by the Single Bench it is quite evident that such interest should also be paid on the 60% due arrears that was paid to the petitioner pursuant to a direction of the Division Bench.

10. Now, on the question of deduction of an amount from the retiral benefits of a former employee after superannuation, it has been made clear by the decision in Rafiq Masih (supra) that such deduction cannot be done after retirement of the employee. Here, the relevant facts are quite akin to the ones given in illustration (iv) at paragraph 18 of the said judgment. In the instant case, the alleged over payment was made purportedly owing to wrong fixation of pay for a new post and the purported mistake was corrected after the petitioner's retirement. Thus, the ratio squarely applies in the instant case.

11. The ratio laid down in Rafiq Masih (supra) is quite clear and categorical and there is no reason to suppose that it would only have prospective effect. Ordinarily a ratio laid down by a Court of law shall date back to the first point in time.

12. Therefore, the sum of money wrongfully deducted from the retiral benefits of the petitioner after his retirement should be refunded to the petitioner with interest.

13. In view of the above discussions, the impugned order passed by the Managing Director of the respondent Corporation is modified to the following extent -

(a) The respondent corporation shall pay an interest at the rate of 7% per annum on 60% of the retiral financial benefits, which had been paid to the petitioner in 2012 pursuant to the direction passed by a Division Bench of this Court from the date of such payment, within a period of one month from this date.

(b) The respondent Corporation shall also refund the sum deducted from the retiral benefits of the petitioner after his superannuation along with 7% interest payable on such sum from the date of the said deduction, within a period of one month from this date.

14. The writ petition is disposed of with the above directions.

15. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

SM