

Item No.142

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 16.08.2022

DELIVERED ON: 16.08.2022

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA 4982 of 2020

Shri Gorachand Mukherjee

VERSUS

The State of West Bengal & Ors.

Appearance:-

**Mr. Suvadip Bhattacharjee,
Mr. Balaram Patra**

.....for the Petitioner

**Mr. Arjun Ray Mukherjee,
Ms. Saheli Mukherjee**

.. for the State.

Mr. Sanjay Saha

... for the respondent nos.2 to 5 & 7 to 9.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. As prayed for by the learned Advocate for the petitioner,
leave is granted to the learned Advocate on-record for the

petitioner to amend the cause title of the instant writ petition by adding the West Bengal Essential Commodities Supply Corporation Limited as a party respondent in this writ petition. Let such amendment be carried out here and now.

2. Since the learned Advocate represents the respondent nos.2 to 5 and 7 to 9 and also has the authority to represent the added respondent, no further copy of the writ petition need be served upon the corporation. However, the petitioner shall be obliged to serve a copy of the amended cause title of the writ petition to the learned Advocate for the respondents by tomorrow.

3. The petitioner has prayed for issuance of a mandamus to command the respondents to release the retirement benefits on account of leave encashment, gratuity, group insurance and puja incentive for the year 2013-2014. The petitioner claims to have retired from service on superannuation as an operator of the corporation on January 31, 2016. The petitioner was allowed to retire on superannuation but though the provident fund and the pensionary benefits have been released in favour of the petitioner but the authorities have illegally withheld the amounts on account of leave encashment, gratuity, group insurance and puja incentive for the year 2013-2014.

4. Mr. Bhattacharjee, learned Advocate for the petitioner, submits that the petitioner was allowed to retire without initiating any disciplinary proceedings. He further submits that the respondent authorities have withheld the aforesaid benefits on the ground that they are contemplating to initiate a departmental proceeding against him. He places reliance upon a decision of the Gujarat High Court in the case of **State of Gujarat State Road Transport Corporation Vs. Devendrabhai Mulvantri Vaidya** reported at **2003(4) L.L.N. 1051** and submits that once the employer permits the employee to retire from service on reaching the age of superannuation, the employer has no power to withhold the gratuity amount.

5. The learned Advocate appearing for the respondent nos.2 to 5 and 7 to 9 submits that the petitioner is one of the FIR named accused in F.I.R. No.733 /2012 dated October 17, 2012 and the corporation has suffered huge pecuniary loss as a result of the action of the petitioner herein. He submits that since the criminal case is pending, the corporation has not released the aforesaid benefits to the petitioner.

6. Heard the learned Advocates for the parties and considered the materials placed.

7. It is not in dispute that the petitioner retired from service on superannuation on January 31, 2016. The Chief General Manager (Administration) by a letter dated January 19, 2016 requested the concerned departments to take necessary action so that the petitioner may get the superannuation benefits in due time. The account division was also requested to take necessary action for adjustment of any outstanding amount in the account of the petitioner prior to the date of superannuation.

8. Admittedly, no departmental proceeding was initiated prior to the petitioner superannuating from service. Section 4 of the Payment of Gratuity Act, 1972 provides that the gratuity shall be payable to an employee on the termination of his service after he has rendered continuous service for not less than 5 years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease.

9. The petitioner having superannuated is thus entitled to receive payment on account of gratuity. Sub Section (6) of

Section 4, however, provides that the gratuity payable to the employee may be forfeited either wholly or partially. Sub-Section (6) of Section 4 is extracted hereinbelow as the same would be necessary for the purpose of deciding the issue as to whether the gratuity payable to the petitioner could have been forfeited in the instant case.

"(6) Notwithstanding anything contained in sub-section (1) -

- (a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;*
- (b) the gratuity payable to an employee [may be wholly or partially forfeited]*
 - (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or*
 - (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment. "*

10. Gratuity can be withheld only if the conditions laid down under sub-Section (6) of Section 4 of the Act is satisfied. None of the conditions laid down under sub-Section (6) of Section 4 of the Act is attracted in the instant case. Therefore, the corporation, in the considered view of this Court, do not have the power to withhold the gratuity amount.

11. The Hon'ble Gujarat High Court in the case of **Devendrabhai Mulvantri Vaidya (supra)** held that when the respondent was allowed to retire from service on reaching the age of superannuation, the corporation has no power to withhold the gratuity amount which can be withheld only in the eventualities as provided in Section 4 of the Act. The said decision is squarely applicable to the case on hand.

12. In view thereof, the respondent authority could not have withheld the gratuity payable to the petitioner. The petitioner claims that he is entitled to an amount of Rs.11,14,000/- on account of leave encashment, gratuity, group insurance and puja incentive for the year 2013-2014. The respondent authorities are directed to take immediate steps for release of the amount due to the petitioner on account of leave encashment, gratuity, group insurance and puja incentive

for the year 2013-2014 as expeditiously as possible but positively within a period of four weeks from the date of communication of this order.

13. This Court, however, makes it clear that this Court has not gone into the correctness of the amount claimed by the petitioner on the aforesaid account and it will be open to the respondent authority to consider the claim of the petitioner and to disburse the same within the time limit mentioned hereinbefore.

14. In the event the respondent no.5 [The General Manager (F) and F.A., West Bengal Essential Commodities Supply Corporation Limited] is of the view that the petitioner is entitled to an amount less than the amount claimed by the petitioner, an opportunity of hearing to that effect has to be given to the petitioner and the decision in that regard has to be taken by passing a reasoned order within the time limit mentioned hereinbefore.

15. It is, however, made clear that the petitioner shall be entitled to statutory interest on the gratuity amount.

16. With the above directions, WPA No.4982 of 2020 stands disposed of without, however, any order as to costs.

17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

Naren, AR(Ct.)