IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 10322 of 2015

Niranjan Dutta

Versus

State of West Bengal & Ors.

For the petitioner	:	Mr. Debdutta Basu .....Advocate
For the respondent nos. 2 to 5	:	Mr. Niladri Bhattacharjee Ms. Deblina Chattaraj Mr. Rohan Chatterjee .....Advocates
For the State	:	Mr. Biswa Nath Samanta ....Advocate
Heard lastly on	:	11.08.2022
Judgment on	:	27.09.2022

Jay Sengupta, J.:

1. This is an application praying for a direction upon the respondents to pay and disburse interest at the rate of 10% per annum for the period from

1st February 2009 to 4th February 2015 for delayed payment of gratuity and leave salary.

2. Learned counsel appearing on behalf of the petitioners submitted as follows. The petitioner was a permanent employee of the respondent corporation i.e., West Bengal Transport Corporation. He was an Inspector who retired from service with effect from 31.01.2009. After retirement, the petitioner was paid Rs. 3,00933.39 only on account of provident fund and Rs. 79368.35 only on account of gratuity and leave salary paid in February 2009. As per recommendation of the Fifth Pay Commission, the pay structure of the respondent Corporation was revised and notional effect of the change was given from 01.01.2006 and cash effect was given from 01.04.2008. The order was issued to the M.D. of the respondent Corporation on 17.09.2009, but he sat tight over it till 2015. As the effect of the revised pay was given from 01.01.2006 and the petitioner retired on 31.01.2009, therefore the petitioner was entitled to the difference of gratuity in the revised rate. The MD of the Corporation issued a notice in January 2015 for releasing the difference in gratuity to the retired employees at a belated stage and without assigning any reason. The petitioner was paid Rs. 1,39,102.50/- only on account of differential gratuity and Rs. 30,730.00/- on account of leave salary. But, no interest for the delayed payment was paid to the petitioner. As per provisions of the payment of Gratuity Act 1972, several retired employees had earlier approached this Court claiming interest for the delayed payment of gratuity and leave salary and were granted orders to release interest at the rate of 5% or 6% or 7% as the case may be. Payment of interest on such due sums is a fundamental right of the petitioner. Reliance was placed on the decision in S.K. Das Versus the State of Haryana and another reported at (2008) 3 SCC 44.

3. Learned counsel appearing on behalf of the respondent nos. 2 to 5 submitted as follows. The petitioner was a former employee of the respondent no. 2. He retired from service on superannuation on 31.01.2009 pursuant to his retirement the petitioner was paid his retirement benefits as follows.

(a) Leave Salary – Rs. 1,10,822/- Cheque No. 799252 dated 20.02.2009

(b) Leave Salary – Rs. 2,668/- Cheque No. 799353 dated 17.04.2009

(c) Diff Leave – Rs. 30,730/- Cheque No. 29532 dated 04.02.2015

(d) Gratuity – Rs. 79,214.95 Cheque No. 799279 dated 27.02.2009

(e) Gratuity – Rs. 1,912.50 Cheque No. 799342 dated 08.04.2009

Subsequently, revised pay as per recommendation of the Fifth Pay Commission was issued in September 2009. The respondent Corporation implemented the said revised pay. Benefit was given effect to notionally from 2006 and actually from 1st April 2008. When the petitioner retired, the said recommendation was not in existence. Therefore, he was paid his retiral benefits as per the old basic pay structure. Pursuant to the funds made available to the respondent Corporation by the State Government, the respondent Corporation immediately issued a notice for payment of differential gratuity and leave salary to the retired employees from April 2008 to August 2009 and from (non-pensioner) and April 2008 to December 2010 (pensioner). Accordingly, the employees concerned applied for the same. The petitioner was paid PF of Rs. 3,00,933.39 by Cheque no. 230875 dated 18.03.2009. As regards interest, it is pertinent to note that the revision of pay and allowances did not recommend any interest to be paid for delayed implementation of the same. On 08.04.2015 the petitioner made a representation before the Managing Director of the respondent no. 2 with a request to release interest amount at the rate of Rs. 10% for the delayed payment of gratuity and leave salary.

4. I heard the learned counsels appearing on behalf of the parties and perused the writ petition, the affidavits and the written notes of submissions.

5. First, the admitted facts are that the petitioner was a former employee of the respondent no. 2 who retired from service on 31.01.2009; initially he was paid retiral benefits as per the old pay structure; in September 2009 a revised pay as per the recommendation was implemented as per the recommendation of the Fifth Pay Commission; the recommended pay benefit was given effect to notionally from 2006 and actually from 1st April 2008; as per the revised structure the petitioner was paid Rs. 1,39,102.50/- on account of differential gratuity and Rs. 30,730/- on account of leave salary.

6. Although the revised pay structure was given effect to from a much earlier date, the petitioner was paid the differential amounts much later only on 04.02.2015.

7. Money has a present value as well as a future value and the two are balanced by an amount of interest that would be due on a present sum as on a particular date in future. Therefore, a minimum amount as interest would be due to the present petitioner for the delayed payment of retiral benefits in the revised scale.

8. In fact, as per the Payments of Gratuity Act there is a statutory provision for payment of interest on delayed disbursal of gratuity.

9. The petitioner has quite rightly relied on the decisions passed by the Co-ordinate Benches of this Court regarding payment of interest on delayed disbursal of retiral benefits.

10. In view of the above and in the interest of justice, the respondent nos. 2 to 5 are directed to pay to the petitioner interest at the rate of 7% per annum on the sum of money paid to the petitioner belatedly as the differential amount for the period of 1st February 2009 to 4th February 2015. The said payment shall be made as full and final settlement on the issue within a period of 8 weeks from the date of communication of this order.

11. With these observations, the writ petition is disposed of.

12. 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.)

S.M