

14
19.07.2022
sb
Ct 23

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 12521 of 2022

Malay Kumar Mandal
Vs.
West Bengal State Electricity
Distribution Company Limited & Ors.

Mr. Bikash Shaw
.... For the petitioner.

Mr. Sumit Panja,
Mr. Sumit Ray
... For WBSEDCL

Affidavit of service filed in Court today is taken on record.

The petitioner was initially an employee of West Bengal State Electricity Board (in short, WBSEB). After bifurcation of WBSEB the petitioner became an employee of West Bengal State Electricity Distribution Company Limited (in short WBSEDCL) and retired therefrom on attaining the age of superannuation with effect from 31st October, 2020. The petitioner was paid his retiral benefits in phases at a belated stage. Rs.20 lakhs was paid on 10th May, 2021 (as gratuity). On 3rd May, 2021 and 2nd July, 2021 he was paid as arrears of pension respectively a sum of Rs.3,57,750/- and 62,733/-. The petitioner is claiming interest for delayed payment of his retiral dues.

On behalf of WBSEDCL, it is submitted that the

petitioner had issued a “no dues” certificate while he received the principal sum. The petitioner therefor is not entitled to any interest for the delayed payment. After having issued “no dues” certificate, the petitioner has waived his right or is estopped from claiming any interest for delayed payment. It is further submitted by WBSEDCL that in respect of some assignment given to the petitioner during his service tenure some enquiry is going on and, as such, the delay occurred for which WBSEDCL as an employer cannot be held responsible.

The fact remains that the date of superannuation is admitted. So as the dates on which the retiral benefits have been paid to the petitioner. No show-cause notice in contemplation of initiating a disciplinary proceedings had been issued against the petitioner prior to his retirement. No disciplinary proceedings has also initiated against the petitioner. On the contrary, despite there being an enquiry in respect of some assignment given to the petitioner during his service tenure as submitted by WBSEDCL, the petitioner was paid his retiral benefits. If the issue was so serious as sought to be projected by WBSEDCL the principal sum should have been kept withheld which is not in the instant case. The matter is, therefor, not required to be heard on affidavits as there is no disputed question of fact. In absence of the petitioner being proceeded with in any manner whatsoever, it was the obligation of WBSEDCL to pay the retiral benefits to

the petitioner at the earliest. Having not done so, WBSEDCL as an employer has become liable to compensate the petitioner on the ground that the petitioner was deprived of the money on account of his retiral benefits for the delayed period and the money remained with WBSEDCL by paying interest. “no dues” certificate was required to be issued by the petitioner to receive the payment. A retired person like the petitioner, if is made to sign a “no dues” certificate as a pre-condition for releasing his retiral benefits cannot be accused of having waived his right to claim interest or being estopped from claiming interest for the delay in paying his retiral dues once he has issued the “no dues” or “no claims” certificate. The super bargaining power of the employer to impose a condition to issue discharge voucher with “no dues” or “no claims” cannot be overlooked. A retired employee like the petitioner does not have the strength to deny the issuance of “no dues” certificate as he is in necessity to receive the retiral benefits to live with dignity.

In the aforesaid facts and circumstances, I direct WBSEDCL to pay interest on the retiral dues which was paid belatedly from 1st November, 2020 till the actual payment of such amount at the rate of 6 per cent per annum. The interest has to be paid by 22nd August, 2022, failing which the interest rate will increase and stand at the rate of 10 per cent per annum being the rate

of interest payable in respect of delay in paying gratuity. The petitioner's right to claim interest finds support in the ratio laid down by the Hon'ble Supreme Court in the judgment reported in **(2022) 4 SCC 627 (Dr. A. Selvaraj vs. C.B.M. College & Ors.)**. The rate of interest allowed is fair and reasonable in view of the ratio laid down in the judgment of the Hon'ble Supreme Court in **(2021) 11 SCC 543 (State of Andhra Pradesh and Another vs. Dinavahi Lakshmi Kameswari)**.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

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

All parties, including the officials of WBSEDCL, responsible for making payment by carrying out the direction given in this order shall act on the basis of the copy of this order duly down loaded from the official website of this Court without insisting upon production of certified copy thereof.

Although, WBSEDCL is represented and this order is passed in their presence for which no further notice is required yet for abundant caution, the petitioner may serve a server copy of this order upon WBSEDCL.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Arindam Mukherjee, J.)