IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar
and
The Hon'ble Justice Ananda Kumar Mukherjee

MAT 759 of 2018

With

I.A. No. CAN 1 of 2021

(Old No. CAN 12779 of 2019)

Mihir Kumar Das & Ors.
Vs.
The State of West Bengal & Ors.

For the Appellants: Mr. Rajdip Ray, Adv.
Ms. Mousomee Shome, Adv.

For the Respondent Nos. 4-8: Mr. Sharanya Chatterjee, Adv.

Heard on : 17.05.2022.

Judgment on: 22.07.2022.

Ananda Kumar Mukherjee, J. :-

1. The appellants herein are four of the nine Writ petitioners who were employees under the Kalyani Spinning Mill (A Govt. of West Bengal Undertaking) at Kalyani, District Nadia. This intra-court appeal has been preferred against the Judgment and Order dated 08.06.2018 passed by the

Hon'ble Single Bench in Writ Petition no. 5198(W) of 2018 whereby the prayer of the petitioners for issuance of a writ mandamus upon the respondents, directing payment of interest on delayed payment of gratuity was rejected.

2. Being aggrieved with the impugned judgment, the petitioners have preferred this appeal on grounds, *inter alia*, that the judgment and order passed by Hon'ble Single Bench is bad in law, without reasons and the Hon'ble Single Bench has not considered the violation of the statutory provisions under which simple interest is payable by the employer on his failure to pay gratuity within the stipulated period. It is further urged that the Hon'ble Single Bench while disposing of the writ application failed to consider that the existence of an alternative remedy is not a bar to invoking the Writ Jurisdiction of this Court when the legal rights of the appellant/petitioner have been infringed by the statutory authority. It is asserted by learned advocate for the appellants that in an identical situation, the Hon'ble Division Bench has given relief by directing the respondent authorities to pay interest. Therefore, the Hon'ble Single Bench should have granted the relief to the petitioners in the light of the Payment of Gratuity Act, 1972, which clearly lays down that if Gratuity is not paid to the retired employee within the stipulated period, the employer will have to pay simple interest on the Gratuity amount from the date of retirement till the date of actual payment.

3. Referring to a judgment dated 04.07.2017 passed by a Hon'ble Division Bench of this Court in MAT 1271-76, 1102, 1104-13, 1115-1127, 1267, 1270, 1289, 1291 of 2016, wherein under identical circumstances this Court allowed

interest to the petitioners at the rate of 6% per annum on the Gratuity payable to the retired employees of the respondent, it is urged that the petitioners may be allowed interest at the rate of 10% per annum on Gratuity amounts paid to them from the date of their retirement till the date of payment.

4. No affidavit-in-opposition has been filed by learned advocate for the respondent. Respondent nos.1 to 3/the State authorities have not appeared in this Appeal. Mr. Chatterjee, learned advocate appearing for the respondent nos. 4 to 8, submitted that the order passed by the Hon'ble Single Bench in the writ petition is consistent with the law and is based upon the statutory provisions that Gratuity should be claimed before the Controlling Authority under the Payment of Gratuity Act, 1972 and the Writ Court should not assume jurisdiction over the matter and bypass the statutory mechanism provided for recovery of gratuity and interest.

5. Mr. Chatterjee further argued that there is no reason for interfering with the impugned order and that the petitioners should take appropriate steps before the Controlling Authority provided under the statute for grant of interest. In support of his arguments Learned Counsel relied upon a decision in the case of **Uttaranchal Forest Development Corporation and Ors. Vs. Jabar Singh and Ors, (2007) 2 SCC 112.** The facts of the case are that 38 appeals were filed by the Uttaranchal Forest Development Corporation against the Judgment and Order passed by the High Court of Uttaranchal in Writ Petition 1376 of 2001. The writ petitions giving rise to the aforesaid Appeal were filed by the respondents workmen against an Award dated 24.12.1997 passed by the

Learned Labour Court at Dehradun. The U.P Forest Corporation had engaged daily wage workers for the purpose of measurement of wood, protection of timber at the logging sites and depots of the Corporation. The U.P Forest Corporation was the predecessor of the appellant Corporation. The services of the respondents were retrenched by order after giving one month's wage in lieu of notice by way of retrenchment compensation in compliance with Section 6-N of the Industrial Disputes Act, 1947. The payments were received by the respondents without protest. Industrial Dispute was raised by the respondents before the Learned Labour Court at Dehradun which passed an Award holding that the retrenchment order was legal and valid as the provisions of section 6-N of U.P. Industrial Disputes Act had been fully complied with and that provisions of section 25N of the Industrial Disputes Act are not attracted as the Forest Corporation is not an industrial establishment as defined in section 25N of the Industrial Disputes Act.

6. Aggrieved by such an order, Jabar Singh and Ors. filed writ petitions under Article 226 along with other writ petitioners which were allowed by the High Court with a direction that the writ petitioners shall be put back on duty and shall be paid salary/wages. The question which fell for consideration was whether the provisions of Section 25N of the Industrial Disputes Act, 1947 are attracted or not and whether for non-compliance of the conditions contained in Section 25N, retrenchment order as well as Award was illegal and *non-est*. The Hon'ble High Court found that since the activity of the Forest Corporation are carried on in "premises", the first requirement of the definition of factory is

satisfied. It was also held that cutting of trees and shaping the cut trees into logs is a manufacturing process under section 2(k) of the Factories Act and therefore, it is an Industrial Establishment within the meaning of section 25L of the Industrial Disputes Act. The High Court held that the retrenchment was made without complying with the provisions of Section 25N of the Industrial Disputes Act and the said order was void and stood quashed with a direction to put back the petitioners on duty and pay their salaries.

7. The Hon'ble Supreme Court in the aforesaid appeal held that the workmen did not make out any exceptional circumstance to knock the doors of the High Court straightaway without availing the effective alternative remedy under the Industrial Disputes Act. But the dispute relates to enforcement of the rights or obligations under the statute and since a specific remedy is, provided under the statute, the High Court should not deviate from the general view and interfere under Article 226 of the Constitution except when a very strong case is made out for making a departure. Accordingly, it was held that the High Court was not justified in entertaining the writ petition.

8. Learned Advocate for the respondents accordingly submitted that when there is a Scheme under a statute for providing an alternative remedy, the writ petition and this appeal arising thereof are not maintainable. The appellants are not entitled to the relief of interest on the Gratuity sum and the appeal is liable to be dismissed.

9. In reply, learned advocate for the appellants submitted that when there is an infringement of provisions under the law and the petitioners/appellants

are deprived of their rightful dues despite an alternative remedy being available under the statute, a Writ Court has ample jurisdiction to entertain the plea, grant appropriate relief and assuage the hardship caused due to the arbitrary action or, inaction of the respondents.

10. To reinforce the case of the Appellants, Learned Advocate relied on the following decisions: In the case of **Harbanslal Sahnia and Another Vs. Indian Oil Corporation Limited and Others; (2003) 2 SCC 107,** the Hon'ble Supreme Court on the issue of maintainability of a Writ under article 226 of the Constitution of India held as follows:

"The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The present case attracts applicability of the first two contingencies. Moreover the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

11. Learned advocate for the appellants also placed reliance upon another decision in the case of **Y.K. Singla Vs. Punjab National Bank and Others; (2013) 3 SCC 472,** which relates to payment of interest on delayed Payment of Gratuity under Sections 7(3A), 4(5) and Section 14 of the Payment of Gratuity Act, 1972. In the above case, the appellant who was posted as a Manager at Punjab National Bank, Chandigarh Branch, was accused of having entered into a conspiracy with the Regional Manager of the Bank and an IAS Officer in the

Department of Town and Country Planning, Haryana and fraudulently sanctioned a loan to the wife of the IAS Officer. A CBI enquiry was held and the bank employee was tried under the Prevention of Corruption Act. The Learned Trial Court acquitted the accused persons. During pendency of the criminal case the Bank Manager retired from his employment on attaining the age of superannuation. His Gratuity and dues were released. He claimed interest on his Gratuity from the date of his retirement till the date of actual payment and preferred a Civil Writ Petition before the Hon'ble High Court of Punjab and Haryana at Chandigarh. The High Court directed Punjab National Bank to pay the appellant an interest at the rate of 8% from the date of his retirement till the actual payments. Punjab National Bank preferred an appeal before the Division Bench which arrived at a conclusion that the appellant was not entitled to the interest on delayed Payment of Gratuity. This decision was assailed by the aggrieved employee before the Hon'ble Supreme Court. On considering the matter the Hon'ble Supreme Court held that the High Court was fully justified in concluding that it was open to Punjab National Bank not to pay the Gratuity to the appellant till conclusion of the proceedings against him. Therefore, non-release of Gratuity to the appellant till his acquittal by the Special Judge, CBI Chandigarh cannot be faulted. Hon'ble Supreme Court distinguished the right to withhold the Gratuity as an issue separate and distinct from the claim of interest which has been raised by the appellant. The question which arose for consideration was whether an employee whose Gratuity had been withheld under Regulation 46(2) of the 1995 Regulation, would be entitled to interest on the withheld payment of Gratuity, if he is found not to be at fault. The Hon'ble Apex Court finally held that since the Gratuity was withheld for 14 years for no fault of the appellant, he is most definitely entitled to interest on the delayed payment.

12. Furthermore appellants placed reliance on the decision of **S.K. Dua Vs. State of Haryana and Another; (2008) 3 SCC 44,** which relates to entitlement of interest on delayed payment of Gratuity, wherein the Hon'ble Supreme Court held that,

"*14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well- founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of 'bounty' is, in our opinion, well-founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.*"

The Hon'ble Supreme Court set aside the order and remitted the matter to the High Court for fresh disposal in accordance with law.

13. Having considered the rival contentions in the light of the facts and circumstances of this case, the statutory provisions and the above legal authorities cited by the parties, it is evident that in Paragraph 3 of their application the writ petitioners have stated their respective dates of

retirement. They visited the office of the respondent authorities for release of their retiral benefits and their Gratuity and other allowances but the same was delayed. It is stated in paragraph 6 of the application that after a long period the Gratuity amount was released in favour of the employees in the month of the May, 2016 but they did not pay any statutory interest on the said sum.

14. In the instant case the Appellants/petitioners had filed an Affidavit of Service disclosing service upon the State through the learned Government Pleader, the Principal Secretary, Finance Department and the Managing Director of Kalyani Spinning Mills Limited. No Affidavit-in-Opposition has been filed in the case denying the averment that there was delay in payment of the Gratuity amount till May, 2016. Section 7(3) of the Payment of Gratuity Act provides that the employer shall arrange to pay the amount of Gratuity within 30 days from the date it becomes payable to the person to whom the Gratuity is payable. The Appellants/ petitioners were therefore entitled to received their Gratuity amounts within 30 days from the date of their superannuation/ retirement. There is no case that the petitioners were disentitled to receive their Gratuity amounts due to any misconduct, act of violence against the management or disorderly behavior in the place of their employment or, for any conviction in any criminal case. There is no case of the respondents that the Controlling Authority under the Payment of Gratuity Act had considered the question of entitlement to payment of

Gratuity and interest thereon to the Appellants. Therefore, the statutory mechanism set up under the Gratuity Act was not invoked. Therefore, the act of the respondents of non-payment of Gratuity without assigning any reason by the employer is arbitrary and under such a situation the Appellants/ writ petitioners have the right to invoke the Writ Jurisdiction of this Court for their relief.

15. In **Uttaranchal Forest Development Corporation and Ors. Vs. Jabar Singh and Ors; (2007) 2 SCC 112**, the Labour Court at Dehradun had passed an Award. Instead of exhausting the Appellate forum under the Industrial Disputes Act, the workers filed writ petitions before the High Court, which set aside the Award. In a subsequent appeal to the Supreme Court, it was held that the High Court was not justified in entertaining the writ petition. The factual situation in Uttaranchal Forest Development Corporation's case stands distinguished from the facts of this case where delayed payment of Gratuity to the Appellants by five to six years without interest has given rise to an exceptional circumstance for invoking Writ Jurisdiction. Accordingly we find and hold that the decision relied upon on behalf of the respondents are distinguishable from the present case and has no application to this case.

16. At this juncture it is appropriate to refer to a recent legal authority in the case of **M/S Radha Krishnan Industries Vs. The State of Himachal Pradesh; (2021) 6 SCC 771,** wherein the Hon'ble Supreme Court while dealing with the question of Maintainability of writ petitions under Article 226 of the Constitution was pleased to, *inter alia*, observe as follows:

"23. We shall now review the position of law on the questions before us. C.1 Maintainability of writ petition before the High Court 24 The High Court has dealt with the maintainability of the petition under Article 226 of the Constitution. Relying on the decision of this Court in Assistant Commissioner (CT) LTU, Kakinada and others v Glaxo Smith Kline Consumer Health Care Limited20, the High Court noted that although it can entertain a petition under Article 226 of the Constitution, it must not do so when AIR 2020 SC 2819 PART C the aggrieved person has an effective alternate remedy available in law. However, certain exceptions to this "rule of alternate remedy" include where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable. 25 In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy" and its judicial exposition. In Whirlpool Corporation v Registrar of Trademarks, Mumbai21, a two judge Bench of this Court after reviewing the case law on this point, noted:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on (1998) 8 SCC 1 ("Whirlpool") PART C some old decisions of the evolutionary era of the constitutional law as they still hold the field." (emphasis supplied) 26 Following the dictum of this Court in Whirlpool (supra), in Harbanslal Sahnia v Indian Oil Corpn. Ltd.22, this court noted that "7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] .) The *present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings." (emphasis supplied) 27 The principles of law which emerge are that :*

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person; (2003) 2 SCC 107 PART C

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of

exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

17. Accordingly, in view of the exceptional circumstances made out by the appellants to invoke the Writ Jurisdiction by way of an efficacious remedy to be paid their interest upon gratuity which is statutorily permissible and delayed without reason, the Hon'ble Single Bench erred in not exercising jurisdiction by relegating the petitioners to the statutory authority.

18. In view of the above discussion this Court deems it appropriate, reasonable and adequate to grant a simple interest of 7% per annum to the petitioners over the Gratuity amounts received by the petitioner/Appellants from the date of their retirement till the date when payments were actually made.

19. The impugned Judgment and Order passed by Hon'ble Single Bench in W.P 5198 of 2018 stands accordingly set aside. **MAT** No. **759** of **2018** along with **CAN 1** of **2019** are thus **allowed** without any cost.

20. The Managing Director, Kalyani Spinning Mills Limited, the respondent No.-6 shall disburse the interest payable to the appellants not later than four weeks from the date of the communication of this Order.

21. All parties to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

22. Urgent Photostat certified copy of this order may be supplied to the parties expeditiously if applied for, maintaining all formalities..

I Agree,

(Subrata Talukdar, J.) **(Ananda Kumar Mukherjee, J.)**