

20.09.2022
Ct. no.21
Sl. No.03
Sanjay

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 16631 of 2022

Dilip Kumar Mitra
Vs.
State of West Bengal & Ors.

Ms. Susmita Dey (Basu)
....for the petitioner.

Mr. Rabindra Nath Pal ...for the State.

Mr. N. C. Bihani,
Ms. P.B. Bihani,
Mr. Soumyajit Ghosh,
Mr. Soumya Mukherjee ...for the respondents.

In this writ petition, the writ petitioner has prayed for i) interest on delayed payment of provident fund, gratuity and leave salary from the date of his retirement i.e. February 28, 2021 till the date of actual disbursement ii) computation of the gratuity amount from November 15, 1988 instead of December 11, 1989 and iii) disbursement of balance amount of gratuity as per the amendment of Section 4(3) of the Payment of Gratuity Act, 1972 enhancing the ceiling limit of the gratuity amount from 10 lacs to 20 lacs with effect from March 29, 2018.

Ms. Dey (Basu), learned counsel appearing on behalf of the petitioner fairly submits that the issue No. (iii) is pending adjudication in other writ petitions and as such she does not wish to agitate the same in this writ petition. She submits that the writ petitioner was engaged with the respondents as a Driver from

November 15, 1988 and is thus entitled to payment of gratuity from the said date.

Furthermore, she submits that delayed payment his retirement dues have been admitted by the respondent Nos. 3 to 6, being the respondents concerned, in the report filed before this Court.

Mr. Bihani, learned counsel appears on behalf of the respondent Nos. 3 to 6 and submits that the ex-employee was duly engaged as a trainee driver in 1988 and pursuance to the successful completion of his training he was engaged as a regular driver on December 8, 1989. He also refers to the definition of "Employee" under Section 2(e) of the Payment of Gratuity Act, 1972 in support of his contention that apprentice/ trainee cannot be considered to be a regular "Employee" of the organisation.

Having considered the rival submissions of the parties and the materials placed on record, this Court is of the view by letter of appointment dated December 8, 1989 the writ petitioner was appointed as a regular driver and was kept on probation for the period of one year from the date of his appointment. Therefore, it cannot be disputed that the writ petitioner was found fit for appointment to the post of Bus Driver with effect from December 8, 1989 and his gratuity payment is to be calculated from the said date.

It is admitted position that a sum of Rs.11,38,000/- towards contributory provident fund

was disbursed on May 12, 2021 and an amount of Rs. 17,07,270/- being 60% of contributory provident fund was disbursed on July 15, 2021 by the employer. The writ petitioner was paid a sum of Rs.10,51,848/- towards gratuity amount on June 2, 2022 and a sum of Rs. 2,55,046/- was released on account of leave encashment benefits on May 31, 2022. The writ petitioner was paid a sum of Rs. 18,502/- towards of arrear of ROPA, 2009 on June, 2022 an amount of Rs.1359/- towards arrear increment on June 10, 2022. He was also paid an amount of Rs.9310/- on June 10, 2022 towards arrear D.A. accrued on the pre revised scale.

Since the retiral benefits were not issued to the petitioner immediately on his retirement on February 28, 2021 the writ petitioner is entitled to get interest at the rate of 6% per annum from March 1, 2021 being the date of succeeding the date of his retirement till the actual date the benefits were released. Such interest is to be paid by the respondent Nos. 3 to 6 within three months from the date of this order. In the event, there is any delay in disbursement of the payment on account of interest, the same shall be paid at the rate of 10% per annum from the date of default i.e. from the date of succeeding the date of retirement.

With the aforesaid directions, the writ petition being **WPA 16631 of 2022** is **disposed of**.

There will be no order as to costs.

Report filed on behalf of the respondent Nos. 3 to 6 and the rejoinder thereto filed by the writ petitioner be retained with the records.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)