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Ct. No.23
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 20152 of 2021

Sanchay Kumar Pyne
Vs.
The State of West Bengal & Ors.

Mr. Ayan Banerjee
Ms. Debasree Dhamali
... For the petitioner

Mr. Ziaul Islam
Mr. S. Sabud
... For the respondents no.1 to 4/State

Mr. Sujit Sankar Koley
... For DPL

The petitioner is a retired employee of Durgapur Projects Limited (in short "DPL") who retired from services on 30th September, 2018. The petitioner filed an application under Section 7 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the "1972 Act") before the Controlling Authority. The Controlling Authority passed an order dated 25th October, 2019 directing DPL to pay a principal sum of Rs.17,30,077/- and interest of Rs.1,87,425/- aggregating to Rs.19,17,502/-. DPL preferred an appeal on 18th November, 2019 before the Appellate Authority. The principal sum of Rs.17,30,077/- was deposited by DPL with the Appellate Authority on 7th December, 2019.

Under the provisions of Section 7(4)(c), 7(4)(d) and 7(4)(e) of the 1972 Act, the Controlling Authority appointed under the said Act is required to make over the deposit to the employee at the earliest. In the instant case, the deposit was made on 7th December, 2019 and the appeal preferred by DPL was disposed of on 23rd March, 2020. The deposit of Rs.17,30,077/- was paid to the petitioner by the Appellate/Controlling Authority on 2nd February, 2021. Although, the delay on the part of the Appellate/ Controlling Authority remains unexplained but the delay is an admitted position.

The Controlling Authority says that the money deposited with it by DPL was put into the P.L. Account in the name of the Deputy Labour Commissioner, EL & MW Section, Kolkata, maintained with the Reserve Bank of India at its Kolkata office as per the prevailing procedure. This account does not earn any interest. The Controlling Authority and the Appellate Authority are, therefor, not in a position to pay any interest since they did not earn any interest out of the deposit.

The fact remains that the appeal was disposed of on 23rd March, 2020. Even taking a very lenient view due to Pandemic out of Covid-19 having intervened immediately after the appeal was disposed of, then also the release of the deposit on 2nd February, 2021 remains unexplained.

Gratuity is, admittedly, a part of the retiral benefit and delay in making payment attracts interest. In the instant case, the petitioner on having not received his gratuity amount even after retirement was forced to approach the Controlling Authority. The Controlling Authority passed an order which remained unaltered even in appeal preferred by DPL. The delay in the petitioner receiving the gratuity amount primarily occurred due to DPL, a State Government enterprise. In the recent judgement pronounced by the Hon'ble Supreme Court reported in (2022) 4 SCC 627 (Dr. A. Selvaraj v. CBM College & Ors.), an employee is entitled to interest for delayed payment of his retiral benefits if the delay is occurred without any fault on his part. In the instant case, there has been no delay due to any act of the petitioner. The judgment of Dr. A. Selvaraj (supra) also clarifies that even if there is an *inter se* dispute as to which authority is liable to pay resulting in the delay, then also the interest has to be paid. In the said judgment of Dr. A. Selvaraj (supra) after considering an *inter se* dispute, it has been categorically held that the money is at the first instance payable by the employer and the same is recoverable after the cause and responsibility as to the delay is fixed.

In the case in hand, the employer has caused the initial delay. The subsequent delay was on the part of the Appellate/Controlling Authority. After having deposited the money with the Appellate Authority in terms of the order passed by such authority at the time of preferring the appeal, the employer cannot claim to have been absolved of the liability so far as the principal sum is concerned since it caused the initial delay. The principal and the interest became payable at once on the appeal having been dismissed on 23rd March, 2020. Even prior to that the deposited amount was required to be paid as per statute. The liability as to payment of interest remains with the employer – DPL – as DPL did not deposit the amount on account of interest arrived at by the Controlling Authority after being unsuccessful in the appeal. The interest amount of Rs.1,87,425/- was ultimately paid on 22nd December, 2020.

In the aforesaid facts and circumstances, the employer – DPL – is directed to pay the interest on Rs.17,30,077/- from 25th October, 2019, being the date of the order of the Controlling Authority, till 23rd February, 2021 at the rate of six per cent per annum within a period of four months from date at the first instance.

The respondent no.2 shall conduct an inquiry within a period of six months from the date of passing this order fixing the liability for the delay in releasing the principal sum.

DPL shall be entitled to recover the interest part directed to be paid by it at the first instance after the inquiry is completed fixing the liability for the delay in releasing the principal sum, if DPL is found not to be liable.

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

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

(Arindam Mukherjee, J.)