14.
20-09-2022
(Ct. no.21)
FB

WPA 20189 of 2022

Sri Bikash Chandra Digar
Vs.
The Durgapur Projects Limited & Ors.

Mr. Ayan Banerjee,
Mr. Soumo Chaudhury
... For the Petitioner.

Mr. Sujit Sankar Koley
... For the D.P.L.

Affidavit-of-service filed in Court today be kept on record.

The petitioner was an employee in Durgapur Projects Limited (in short 'DPL'), the respondent no.1. The petitioner retired from service on July 31, 2018. The petitioner on his retirement was entitled to payment of gratuity and leave encashment benefits aggregating Rs. 15,07,146/-. This figure is not in dispute. The said amount was released to the petitioner by the respondents on June 12, 2020, i.e., a period of almost nineteenth months from the date of his superannuation.

Mr. Ayan Banerjee, learned Counsel, appearing on behalf of the petitioner, submits that the writ petitioner is, therefore, entitled to interest for delayed payment of gratuity as per provisions of Section 7(3A) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the 1972 Act') and interest on the same rate of leave salary as the same is a part of his retiral benefits.

Mr. Sujit Sankar Koley, learned Counsel, appearing for the respondents, submits that the delay in payment was not intentional, but due to financial stringency of the DPL. He submits that the rate on account of delayed payment has been considered by the Division Bench of this Court and also by the Hon'ble Supreme Court.

This Court finds that financial stringency on the part of the employer/DPL cannot be a ground in delaying payment of the retiral benefits of an employee, which becomes due and payable immediately upon his retirement.

Section 7(3A) of the 1972 Act provides for payment of interest for delay in making payment on account of Gratuity which is 10% per annum as per the last circular. Such is the statutory rate.

On a perusal of a judgment of the Hon'ble Supreme Court reported in 2021 SCC Online SC 237 = 2021 (3) SCALE 42 **(The State of Andhra Pradesh & Anr. v. Smt. Dinavahi Lakshmi Kameswari)** relied upon by the respondents, it appears that the Hon'ble Supreme Court was considering the issue of deferred salary and pension during the pandemic for which the Andhra Pradesh High Court had directed payment of interest at the rate of 12 per cent per annum. The Supreme Court taking note of the pandemic situation reduced the rate of interest from 12 per cent to 6 per cent both in case of deferred salary as also in the case of deferred payment of pension.

This judgment, so far as deferred payment of salary does not apply to the instant case but so far as it relates to deferred payment of pension, it has some application as retiral benefits and pensionery benefit are either inter-linked or the same. Even the issue of deferred payment of pension in the case before the Hon'ble Supreme Court does not match with the facts of the instant case where retiral benefits fell due on 1st September, 2017 i.e., much before 31st March, 2020 when the first circular was issued by the Andhra Pradesh Government owing to the pandemic.

The respondents have also referred to few orders passed by different learned Judges of this Court sitting singly. In one of such orders passed on 22nd June, 2021 in WPA 10092 of 2021 **(Ajit Kumar Chakraborty v. The Durgapur Projects Limited & Ors.)**, a learned Single Judge after considering the judgment of the Hon'ble Supreme Court of India reported in (2008) 3 SCC 44 **(S.K. Dua v. State of Haryana & Anr.)** which held that an employee has a right under Articles 14, 19 and 21 of the Constitution of India to claim interest on delayed payment of retirement benefits and the judgment of the Hon'ble Supreme Court in Smt. Dinavahi Lakshmi Kameswari (supra) allowed 6 per cent interest on delayed payment of gratuity and leave salary by agreeing with another Single Bench judgment dated 16th April, 2021 passed on WPA 9030 of 2021.

The fact remains that the petitioner was deprived of his dues and DPL having not paid the same in time had derived benefit out of such money. The respondents, therefor, is liable to compensate the petitioner for the delay in making payment of his retiral benefits by paying interest on the principal sum for the delayed period. This is also statutorily approved.

Considering the judgment in Smt. Dinavahi Lakshmi Kameswari (supra), and the order of the learned Single Judge referred to above, an acceptable formula can be culled out by consent of the parties. The petitioner agrees to receive interest on account of delayed payment of gratuity and leave salary at the rate of 6 per cent per annum and the respondents agree to pay such interest both on account of delayed payment of gratuity and leave salary.

The respondents also undertake to pay interest on account of delayed payment of Gratuity and Leave Salary from August 01, 2018, being the date of accrual, till June 12, 2020, being the date of actual payment, at the rate of 6% per annum. The respondent no.1 is directed to pay interest to the writ petitioner at the rate of 6% per annum on the sum of Rs. 15,07,146/-, being the amount on account of Gratuity and Leave Salary within three months from date.

Needless to mention, in the event there are any dues payable by the employee to the employer, the same shall be adjusted before disbursing of the interest to the ex-employee.

With the directions aforesaid, the writ petition being **WPA 20189 of 2022** is **disposed of**.

Since no affidavits have been called for in the writ petition, the allegations contained in the writ petition are deemed not to have been admitted by the respondents.

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.)