

WPO 2279 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SWAPAN KUMAR DAS
VS
THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 20th July, 2022

Appearance:
Mr. Debdutta Basu, Adv.
...for the petitioner
Mr. Niladri Bhattacharjee, Ms. Deblina Chattaraj, Mr.
Rohan Chatterjee, Advocates for WBTC Ltd.
Mr. Arjun Ray, Ms. Saheli Mukherjee, Advocates
...for the State

The Court : The petitioner retired from the services of Calcutta Tramways Company (1978) Ltd. (in short, "CTC") now known as West Bengal Transport Corporation (in short, "WBTC") with effect from 31st July, 2019 upon attaining the age of superannuation. The petitioner was paid his retiral benefits which included a sum of Rs.11,04,696/- towards Provident Fund (in short PF), Rs.5,90,000/- on account of gratuity and a sum of Rs.5,39,595/- on account of leave salary only on 3rd and 4th December, 2019. The petitioner is claiming interest on this sum for delayed payment thereof. The petitioner was paid an additional sum of Rs.4,64,350/- towards gratuity on 3rd March, 2021 in view of the gratuity amount having increased due to increase in salary arising out of revision

of pay. The gratuity amount was computed initially on the basis of unrevised salary and the additional amount was the difference in computation on the unrevised salary and that on the basis of revised salary.

The revision of pay and allowance was made applicable by virtue of a notification issued by the Government of West Bengal, Finance Department, Audit Branch on 25th September, 2019. The revision of pay and allowance which resulted in increase in the gratuity amount as aforesaid, therefore, came into effect only on 25th September, 2019 i.e. subsequent to the petitioner's retirement which took place on 31st July, 2019. The notification had a retrospective effect on the salary of the petitioner which he was receiving prior to his retirement. The effect of such enhancement has been duly given to the petitioner by paying the additional amount. However, the petitioner cannot be granted any interest on the additional sum towards gratuity as there was no delay attributable to CTC between 1st August, 2019 and 24th September, 2019, as the notification was not there. The petitioner, therefore, is entitled to interest on the additional sum on account of gratuity from 25th September, 2019 i.e. the date on which the notification came into effect till actual payment i.e. 3rd March, 2021. The petitioner, however, is entitled to interest on the aforesaid sum of Rs.22,34,225/- from 1st August, 2019 till 2nd December, 2019 for delay in making payment thereof.

The issue of payment of interest for delay in paying the retiral benefits have been considered by the Hon'ble Supreme Court in a recent judgment

reported in (2022) 4 SCC 627 (Dr. A. Selvaraj v. CBM College & Ors.). In the instant case, there is no fault on the part of the petitioner for the delay in paying the retiral benefits as it was the obligation of the employer to process the payment of retiral benefits and pay the same within one month from the date of the petitioner's retirement. Since the payment was not made within one month, the interest will date back to the date immediately succeeding the date of the petitioner's retirement.

In the aforesaid facts and circumstances, the respondents are directed to pay interest to the petitioner at the rate of 6% per annum of Rs.22,34,225/- from 1st August, 2019 till 2nd December, 2019. The respondents shall also pay interest on the sum of Rs.4,64,350/- at the rate of 6% per annum from 25th September, 2019 till 2nd March, 2021. The interest has to be paid within a period of three months from date, failing which interest on the two separate amounts as aforesaid i.e. Rs.22,34,255/- and Rs.4,64,350/- will stand increased to 10% per annum being the rate of interest payable at the present under the Payment of Gratuity Act, 1972 for delay in paying the money on such account.

The rate of interest allowed is fair and reasonable and is at the rate allowed by the Hon'ble Supreme Court in a recent judgment reported in (2021) 11 SCC 543 (State of Andhra Pradesh and another V. Dinavahi Lakshmi Kameswari).

Nothing further remains to be adjudicated in the matter.

The writ petition is accordingly disposed of.

The parties including the WBTC and its officers shall act on a server copy of this order downloaded from the official website of this Court without insisting upon production of a certified copy thereof.

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

(ARINDAM MUKHERJEE, J.)