

OD-8

WPO/1463/2021

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

AMIT KUMAR KHAN
Versus
THE STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date : 16th February, 2022.

[Via Video Conference]

Appearance:

Mr. Debdutta Basu, Adv.

...for Petitioner.

Mr. Niladri Bhattacharjee, Adv.

Ms. Deblina Chattaraj, Adv.

..for WBTC Ltd.

Mr. Sirsanya Bandopadhyay, Ld.

Jr. Standing Counsel.

Mr. Arka Kumar Nag, Adv.

..for State Respondents.

The Court :-Report affirmed on 10th February, 2022 by the respondent nos. 2 to 5 and filed in Court today is taken on record.

The petitioner while working in the Calcutta Tramways Company (1978) Ltd. (in short, "CTC") now known as West Bengal Transport Corporation (in short, "WBTC") faced disciplinary proceedings pursuant to which the petitioner was discharged from service with effect from 15th December, 2009. The petitioner says that the Chief Accounts Officer of West Bengal Transport Corporation Limited (in short, WBTC) by an order dated 31st August, 2021 has allowed interest on

delayed payment of gratuity and leave salary from 1st September, 2019 to 16th December, 2020 and interest on arrears of pension from 1st February, 2019 to 3rd January, 2020 at the rate of 6% per annum. The petitioner says that the petitioner is entitled to interest from 16th December, 2009 till the actual date of payment of the amounts on account of gratuity, leave salary and arrears of pension. The Senior Accounts Officer according to the petitioner has erred while granting the petitioner interest at a reduced rate for a very small period instead of entire period.

On behalf of the WBTC it is submitted that the petitioner did not approach or take steps for release of the money and as such the respondents are not liable to compensate the petitioner for the delay in making payment of gratuity, leave salary and arrears of pension.

Assuming without admitting that the petitioner had approached the respondents at a belated stage or did not take any step at the earliest for claiming the terminal benefits, then also the fact remains that WBTC did not fulfil its obligation as an employer by offering the money to the petitioner or calling the petitioner to collect his dues. WBTC, therefore, has derived benefit out of the money which they were required to pay immediately on the petitioner being discharged from service but having paid on posterior date. The money belongs to the petitioner. It is well settled that the terminal benefits are not bounty and cannot be withheld without just cause. The petitioner having received the money at a belated stage was deprived of the benefits out of such money. On the other hand, WBTC being the custodian of the money which they were required to pay to the petitioner derived benefits out of the same while it remained with the said

respondent. The respondents are, therefore, liable to compensate the petitioner by paying interest for the entire period the money remained with the respondent.

In the aforesaid facts and circumstances, the order of the Senior Accounts Officer dated 31st August, 2021 is modified by directing the WBTC to pay interest at the rate of 6% per annum on the principal sum on account of gratuity, leave salary and arrears of pension from the date immediately succeeding the date of removal from service that is 16th December, 2009 till the actual date of payment of the amounts respectively on account of gratuity, leave salary and arrears of pension. The rate of interest is reasonable and fair and is the rate at which the Hon'ble Supreme Court of India allowed interest even during the pandemic as reflected in the judgment reported in 2020 SCC Online SC 1166 (The State of Andhra Pradesh vs. Dinavahi Lakshmi Kameshwari). So far as provident fund is concerned, the WBTC shall pay interest in terms of the order dated 31st August, 2021. The interest has to be paid within a period of six weeks from date and the State Government shall provide necessary funds with the WBTC for the payment of interest as aforesaid to the petitioner, if so required.

Nothing further remains to be adjudicated in the matter.

The writ petition is disposed of accordingly.

(ARINDAM MUKHERJEE, J.)