OD-2

ORDER SHEET

WPO/1020/2016

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SHYAMALENDU CHAKRABORTY
VS
THE STATE OF WEST BENGAL & ORS

BEFORE:
The Hon'ble JUSTICE RAJA BASU CHOWDHURY
Date : November 28, 2022

Appearance:
Mr. Debdutta Basu, Adv
... for the petitioner

Mr. Niladri Bhattacharjee Adv.
Ms. Deblina Chattaraj, Adv.
...for the respondent nos.2 to 6

Mr. Bhaskar Prasad Vaisya, Adv.
Mr. Ranjan Saha, Adv.
...for the State

The Court: The present writ application has been filed, inter alia, praying for a direction upon the respondents to pay and disburse interest at the rate of 12 per cent on account of delayed payment of the retiral dues of the writ petitioner. The writ petitioner was a permanent employee of the respondent no.2. After serving the respondent no.2 for 34 years, he was superannuated with effect from 30th April, 2015.

Mr. Basu, learned advocate representing the writ petitioner while drawing attention of this Court to a notice dated 4th November, 2015, submits that the petitioner was called upon to collect his retiral dues by the aforesaid notice. It is pursuant to the aforesaid notice that actual payments were disbursed in favour of the petitioner only on 5th November, 2015. The payments, inter alia, included provident fund and gratuity payable to the writ petitioner. It is submitted that the respondents were obliged to make payment of the retiral dues within 30 days from the date of retirement. The respondents, having not done so, are bound to compensate the writ petitioner.

He says that the issue with regard to payment of interest on account of delayed payment of retiral dues is no longer *res integra.* In support of the aforesaid contention, Mr. Basu has placed reliance on a judgment delivered by the Hon'ble Supreme Court in the case of *D. D. Tewari (D) Thr. LRS. Vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Ors.* reported in (2014) 8 SCC 891 as also the judgment delivered in the case of Dr. A. Selvaraj Vs. CBM College & Ors. reported in 2022 (4) SCC 627.

Mr. Basu submits that this Hon'ble Court from time to time has directed the respondent no.2 to make payment of interest on account of delayed payment of retiral benefits in respect of similarly placed persons. He submits that in the instant case, admittedly, the retiral dues have not been paid within a period of 30 days when the same fell due and as such, the writ petitioner is entitled to interest on delayed payment of retiral dues.

Per contra, Ms. Chattaraj, learned advocate representing the respondent no.2, submits that the petitioner is covered by the scheme framed, pursuant to directions passed by this Hon'ble Court. By drawing attention of this Court to an order dated 30th June, 2015, it is submitted that this Hon'ble Court having identified the financial difficulties faced by the respondent no.2 consequent upon implementation of ROPA-2009, had directed the Principal Secretary, Finance Department as also the Principal Secretary, Transport Department to formulate a scheme for payment of the retiral dues of ex-employees of the respondent no.2 who were similarly placed as that of the writ petitioner. Such direction had been issued, taking into consideration the mounting loss suffered by the respondent no.2 and the failure on the part of the respondent no.2 to meet their financial commitments.

Drawing attention of this Court to a scheme, for the retired employees of the State Transport undertakings, she submits that the aforesaid scheme has been formulated (hereinafter referred to as the scheme) pursuant to the aforesaid directions passed by this Hon'ble Court. It is submitted that the scheme takes into consideration not only the employees who had retired from services prior to 1st April, 2015 but also takes into consideration all such employees who had retired from services on and from 1st April, 2015 and upto June 2016.

Ms. Chattaraj, learned advocate, by drawing attention of this Court to paragraph 6.2 of the aforesaid scheme, submits that provision for payment of interest has only been made in respect of old retirees, that is employees who have retired prior to 1st April, 2015. No provision had, however, been made for payment of interest in respect of new retirees, i.e., the employees who had retired on or after 1st April, 2015. The writ petitioner having retired from service on 30th April, 2015 was obviously considered in such scheme. Since there is no provision for payment of interest, the writ petitioner cannot be entitled to interest on account of delayed payment of retiral dues.

Considering the submissions made by the learned advocates appearing for the respective parties and the materials on record, I am of the view that the petitioner's entitlement to interest on delayed payment of retiral benefits cannot be disputed, as the right to receive interest on account of delayed payment of retiral benefits is no longer *res integra.* The Hon'ble Supreme Court in the case of *D. D. Tewari (D) Thr. LRS. Vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Ors.* (supra) has already considered the issue with regard to payment of interest on delayed payment of retiral benefits. Financial inability on the part of the respondent no.2, cannot disentitle the petitioner to receive the minimum compensation in the form of interest. I find the scheme framed pursuant to the directions passed by the Hon'ble Court, primarily deals with disbursal of retiral benefits to the ex-employees of the respondent no.2

who had been superannuated prior to 1st April, 2015. The petitioner having retired after 1st April, 2015 cannot be denied interest on delayed payment of retiral dues, simply because there is no provision for payment of interest in the scheme. I find that in the instant case, amongst others, there has been delay in disbursal of gratuity. It would appear from the provisions for Payment of Gratuity Act, 1972 (hereinafter referred to as the said "Act") that gratuity is ordinarily payable within 30 days when it becomes payable. In the event of failure to make payment of such gratuity amount within the time specified above, the employer is liable to pay interest. I find that several of the employees who have retired subsequent to 1st April, 2015 had approached this Hon'ble Court and this Hon'ble Court from time to time, following the aforesaid judgments had directed payment of interest on delayed payment of the retiral dues.

In my view justice would be sub-served if the respondent no.2 is directed to pay interest at the rate of seven (7) per cent per annum on the retiral dues from the date when the same became due upto the date of the actual payment. Let the aforesaid payment be made within a period of three months from date.

With the aforesaid direction, the writ petition stands disposed of.

There shall be no order as to costs.

(RAJA BASU CHOWDHURY, J.)