Form No.J(2)

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present :
The Hon'ble Justice Raja Basu Chowdhury

WPA 2310 of 2023

Nirmal Naskar
Vs.
The State of West Bengal & Ors.

For the petitioner	:	Mr. Tauhid Khan Mr. Marufa Mondal
For the Provident Fund Authorities	:	Mr. Anil Kumar Gupta
For the respondent nos. 5, 6 & 7	:	Ms. Amrita Pandey Ms. Sneha Singh
Heard on	:	19.06.2023
Judgment on	:	19.06.2023

Raja Basu Chowdhury, J:

1. The present writ application has been filed, inter alia, praying for a direction upon the respondent nos. 6 and 7 to release and disburse the provident fund amount and other dues of the petitioner along with interest @ 10 per cent per annum towards the delayed payment of retiral benefits.

2. During the pendency of the aforesaid application, the respondent nos. 6 and 7 had disclosed provident fund statement of subscriber's balance wherefrom it would appear that the respondents had computed a sum of Rs.2,98,850.15p, as an amount due and payable to the petitioner.

3. On 8th May, 2023, the learned advocate representing the respondent nos. 5 to 7 had placed before this Court a cheque for Rs.2,98,850.15 dated 29th April, 2023, drawn in favour of the petitioner "Nirmal Naskar". The said cheque was made over to the petitioner's advocate, who had accepted the same without prejudice to the rights and contentions of the petitioner in the writ application.

4. Mr. Khan, learned advocate representing the petitioner submits that the aforesaid cheque has since been en-cashed. By drawing attention of this Court to the provident fund statement of subscriber's balance, he says that the respondents have computed interest @ 4.0428 per cent, which is far below than the statutory rate.

5. Mr. Gupta, learned advocate representing the provident fund authorities submits that the respondent no.5 is an exempted establishment under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act). He says that in terms of the Provision

of Section 17 of the said Act, an exempted establishment is required to make payment of provident contributions to its employees which shall in no way be less favourable to the employees than the benefits provided under the said Act or any Scheme in relation to the employees in any other establishment of similar character. He says that respondent nos. 6 and 7 could not have declared interest less than the statutory rate. In any event, the respondents are bound to pay interest @ 12 per cent per annum in terms of Section 7Q of the said Act for delayed payment of provident fund contributions.

6. Ms. Pandey, learned advocate representing the respondent nos. 5, 6 and 7 submits that the provisions of Section 7Q of the said Act cannot be made applicable to the respondent no.5. She further submitted that the petitioner cannot be permitted to question the declaration of interest made by the respondent nos. 6 and 7.

7. I have heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case I find that the petitioner has been superannuated from service on 1st August, 2021. Ordinarily, before an employee is superannuated, the process for disbursal of his retiral benefits starts at least six months prior to his superannuation. The respondents, therefore, were under obligation to ensure that immediately upon retirement, retiral benefits be disbursed in

favour of the petitioner. If the respondents have failed to disburse the retiral dues including provident fund dues, they are obliged to pay compensatory interest, especially when there is no explanation for the delay. It has been held by the Hon'ble Supreme Court in ***S.K. Dua v. State of Haryana & Anr.*** reported in **(2008) 3 SCC 44**, that an employee has a right under Article 14, 19 & 21 of the Constitution of India to claim interest on delayed payment of retiral benefits.

8. Admittedly, in this case, despite the writ petitioner being superannuated on 1st August, 2021 the retiral benefits, including the provident fund dues had not been disbursed. It was only after the filing of the writ petition, that the respondent nos. 6 and 7 had handed over a cheque dated 29th April, 2023 in Court on 8th May, 2023.

9. In the aforesaid fact the respondents cannot be permitted to avoid liability of payment of interest. I find that the respondents have computed interest @ 4.0428 per cent. Ms. Pandey has, however, not disclosed any document and/or order which would authorize respondent nos. 6 and 7 to compute interest @ 4.0428 per cent. In my view, the respondents ought to have paid interest at least @ 10 per cent per annum on account of delayed payment of provident fund dues.

10. Having regard to the aforesaid, I propose to dispose of the writ petition by directing the respondent nos. 6 and 7 to make payment of additional interest to the petitioner by computing interest @ 10 per cent per annum on the provident fund accumulations, from the date when the same had fallen due i.e. from the date of superannuation of the petitioner till the date of actual disbursement. While making such payment, the respondent nos. 6 and 7 shall be entitled to the benefit of the amount of interest already paid. The balance amount must be made over to the petitioner along with a statement of computation, within a period of four weeks from the date of communication of this order.

11. With the aforesaid directions and or observations, the writ petition stands disposed of.

12. There shall be no order as to costs.

13. Since no affidavit-in-opposition has been called for, the allegations contained in the writ petition are deemed not to have been admitted by the respondents.

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

(Raja Basu Chowdhury, J.)

S.B.
Assistant Registrar (Court)