28.
29.3.2023
S.D.

W.P.A. 4912 of 2023

Pankaj Kora
Vs.
Eastern Coalfields Limited & Ors.

Mr. Nirmalendu Ganguly
… For the Petitioner

Mr. Kallol Guha Thakurata
Md. Wasim Rahaman
Ms. Sathi Kundu
….For the Respondent No. 4

Mr. Manik Das
…For the Respondent Nos. 1 to 3

The petitioner's father died-in-harness on July 6, 2003 as an employee of the Eastern Coalfileds Limited/ECL. The petitioner was admittedly under the age of 12 years at the time of the death of the petitioner's father. A prayer for disbursal of all the terminal benefits was made on August 1, 2003. Only in 2014, a sum of Rs.3,99,500/- was paid to the petitioner on account of provident fund dues.

Mr. Ganguly, learned counsel appearing on behalf of the petitioner prays for payment of interest on the said provident fund amount. He further submits that the amount of gratuity has not yet been disbursed by the ECL to the petitioner. No Leave Encashment Dues or other admissible terminal benefits have been paid to the petitioner.

Mr. Das, learned counsel appears on behalf of the ECL and submits that since the petitioner did not attain the age of 12 years, the question of keeping his name in the live roaster does not and cannot arise. Therefore, the prayer for compassionate appointment cannot be allowed.

He also emphatically submits that since no necessary application before the Controlling Authority under the Payment of Gratuity Act, 1972 has been made by the petitioner the gratuity amount could not be released.

Upon being specifically asked by the Court whether it was the responsibility of the employer to pay the gratuity to the employee without approaching the Controlling Authority it was answered in the negative. Based on such submission this Court had directed on March 22, 2023 in open Court that necessary application was to be made before the Assistant Labour Commissioner before the next date of hearing. Such order is hereby recalled.

Prior to signing of the order this Court considered the provisions of Section 7 of Payment of Gratuity Act, 1972.

Section 7 of the 1972 Act reads as under:-

Section: 7 Determination of the amount of gratuity

(1) A person who is eligible for payment of gratuity under this Act or any person authorised in writing, to act on his behalf shall send a written application to the employer, within such time and in such from, as may be prescribed, for payment of such gratuity

*(2) As soon as gratuity becomes payable, the employer shall, whether an **application** referred to in sub-section (1) **has been made or not**, person to whom the gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount gratuity so determined.*

*(3) The **employer shall arrange to pay** the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.*

*(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify: **Provided** that no such interest shall be payable it the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.*

(4) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity."

Upon perusal of the said Section there is no doubt in the mind of the Court that it is the primary responsibility of the employer to pay the gratuity dues of the employee even if no application is made by the employee. Here, as early as

August 1, 2003, the application for release of terminal dues of the petitioner's father was made by the Union. Such fact is not disputed. In the event any further application was required to be made it was for the ECL to advise the same to the poor and in all likelihood illiterate dependents. In the event the amount is disputed then the same has to be deposited before the Assistant Labour Commissioner. It is not the case of the ECL that the gratuity amount is disputed and has been deposited with ALC. Such is the view taken by this Court in a judgment reported in AIR Online 2022 CAL 263 (**Dibyajyoti Ghosh vs. Coal India Limited**). Interestingly, the learned counsel for Coal India Limited strenuously argued in that case that the delinquent employee/petitioner was guilty of misconduct since the gratuity dues were to be paid by the employer/CIL even if no application was made and clarificatory Circulars were issued to that effect.

This Court is of the view that no party should be unfairly advantaged by an order of Court. In the event the petitioner is directed to apply before the Controlling Authority the payment of the gratuity amount will be unnecessarily delayed.

It is expected that a counsel appearing on behalf of the ECL should be aware of such Circulars or at least take time to enquire, call for necessary instructions and appraise himself of the same when a specific query was put to him by the Court instead of emphatically submitting that without an application being made before the Controlling Authority no gratuity dues could be paid.

Mr. Das, learned counsel submits in court today that his submissions were not appropriately appreciated by this Court. He had submitted on previous occasion that under Rule 10 of the Payment of Gratuity (Central) Rules, 1972, if an employer refuses to accept the nomination or entertain an application sought to be filed under Rule 7 or issues a notice under Sub-Rule (1) of Rule 8 either specifying the amount of gratuity to be less than that is considered by the applicant or reject the eligibility to payment of gratuity or having received an application under Rule 7 fails to issue any notice as required under Rule 8, then the employee or his nominee or heir within 90 days may apply to the Controlling Authority for a direction under Section 7(4) of 1972 Act. The said sub-Section relates to a dispute with regard to amount of gratuity payable to the employee or admissibility of such claim or as to the entitlement of a person to receive gratuity. In all such cases, the disputed amount has to be deposited with the Controlling Authority.

Rule 10 of the 1972 Rules is reproduced hereinunder:-

"**10. Application to controlling authority for direction.-- (1)** If an employer—

(i) refuses to accept a nomination or to entertain an application sought to be filed under rule 7, or

(ii) issues a notice under sub-rule (1) of rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity, or

(iii) having received an application under rule 7 fails to issue any notice as required under rule 8 within the time specified therein,

the claimant employee, nominee or legal heir, as the case may be, may, within, ninety days of the occurrence of the cause for the application, apply in Form 'N' to the controlling authority for issuing a direction under sub-section (4) of section 7 with as many extra copies as are the opposite parties:

Provided that the controlling authority may accept any application under this sub-rule, on sufficient cause being shown by the applicant, after the expiry of the specified period.

(2) Application under sub-rule (1) and other documents relevant to such an application shall be presented in person to the controlling authority or shall be sent by registered post acknowledgement due."

In the present case, there is no dispute under Section 7(4) of the 1972 Act and, therefore, this Court fails to appreciate how Rule 10 of the 1972 Rules can be cited in order to curb the jurisdiction of the Writ Court nor has the employer refused to accept the nomination/application.

This Court has not appreciated the stance taken by the learned counsel appearing on behalf of the ECL and as such it is not the correct position in Law. ECL has denied the legitimate claim of the petitioner from July 7, 2003 (date succeeding the date of the death of the petitioner's father) without any justifiable reason. The inaction/conduct of the ECL is reprehensible. The ECL will forthwith and no later than a period of 1 month release the entire gratuity dues to the petitioner along with interest at the rate of 18% per annum considering the hardship faced by the petitioner and his family members on the death of the deceased bread winner. This court also relies on a judgment reported in AIR 2000 SC 3513 (2) (**Vijay L. Mehrotra vs. State of U.P. & Ors.**) for granting 18% simple interest since there is no justification/reason for not making payments for two decades. The attitude/conduct of ECL is extremely harassive and cannot be condoned under any circumstances.

Mr. Guha Thakurata, learned counsel appeared on behalf of the Coal Mines Provident Fund Organization on March 22, 2023 and submitted that since interest was being accrued on the amount of provident fund there was no further requirement to pay interest to the heirs of the deceased even if it was wrongfully withheld by CMPFO.

With due respect to the learned counsel for CMPFO, such a submission cannot be accepted by the Court. If such a submission is accepted then it will give the CMPFO the right to disburse the provident fund dues at their own sweet will without any corresponding liability. The money that rightfully belonged to the employee/dependent/heir cannot be held by the authorities without any legally justifiable cause. Here, the money was disbursed more than a decade after death. The conduct on the part of the authorities are harassive to say the least.

Considering the submissions of the parties, this Court directs the CMPFO to pay interest @ 8% p.a. from July 7, 2003 (the date succeeding the date of death) till 2014 since it has wrongfully not been paid to the heirs of the deceased employee by the CMPFO within a reasonable period of time.

This Court further directs the ECL to pay the leave encashment dues along with any other terminal dues of the petitioner's father within four weeks from the date of the communication of this order along with interest at the rate of 8% p.a. on the leave encashment benefits from July 7, 2003 (date succeeding the date of death) till such time the actual payment is made.

With the directions aforesaid, **W.P.A. 4912 of 2023** is **disposed of**.

Since no affidavits have been directed to be exchanged in the present writ petition, all the allegations contained in the petition are deemed not to have been admitted by the parties.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

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

(**Lapita Banerji, J.**)