

15.03.2023
DL-110
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 5100 of 2023

Mahamaya Panda
Vs.
The Durgapur Projects Limited & Ors.

Mr. Siddhartha Sarkar
....for the petitioner.

Mr. S. S. Koley
....for DPL.

Affidavit of service filed in Court today be retained with the records.

The writ petitioner's mother was a permanent employee of the Durgapur Projects Limited (in short 'DPL'), which is a Government of West Bengal enterprise.

The petitioner's mother was superannuated from September 30, 2010. The gratuity dues of the writ petitioner's deceased mother aggregating Rs.2,91,818/- was paid on December 16, 2020. Neither quantum of gratuity nor the date of payment is in dispute.

Mr. Sarkar, learned Counsel, appearing on behalf of the writ petitioner prays for interest on gratuity amount payable to the writ petitioner from October 1, 2010 (the date succeeding the date of retirement of petitioner's mother) till December 16, 2020 (the date on which the gratuity dues were actually paid).

The learned counsel appearing on behalf of the writ petitioner also prays for earned leave of 299.5 days, which has not been paid till date. She further prays for interest on the earned leave, due and payable to the writ petitioner.

The number of days of earned leave, due and payable to the petitioner is not in dispute.

The issue has been squarely settled by various Judgements passed by a Co-ordinate Bench of this Hon'ble Court.

Relying on the judgements on the same issue and considering the facts of the case it is directed that the writ petitioner is entitled to get interest on the delayed payment of her mother's gratuity dues from October 1, 2010 till December 16, 2020 at the rate of 6% per annum.

This Court is of the view that the laws of limitation are not applicable in exercise of jurisdiction under Article 226 of the Constitution of India relying on a judgment passed by the Apex Court reported in **2022 Live Law (SC) 785 (State of Rajasthan & Ors. Vs. O.P. Gupta)**. It has also been held in the said decision that the Court cannot be oblivious to the difficulties of a retired employee in approaching the Court, which could include financial constraints.

The writ petitioner is also entitled to earned leave of 299.5 days and interest thereon @ 6% per annum from October 1, 2010 till the date on which the actual payment is made.

The respondent authority/DPL is directed to pay the aforesaid payment within six months from date.

In the event, the said amount is not disbursed within the stipulated period, the rate of interest will stand enhanced to 10% per annum being the statutory rate under the payment of Gratuity Act, 1972.

With the directions aforesaid, the writ petition, being **WPA 5100 of 2023**, is **disposed of**.

Since no affidavits have been called for in the writ petition, the allegations contained therein be deemed not to have been admitted by the respondents.

Needless to mention, in case the petitioner has occupied the quarter granted by the employer after the death of the deceased employee the occupation charges for the said quarter will be deducted from the retiral benefits of the deceased employee that the petitioner is entitled to as per the extant rules and policies of the employer/DPL.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)