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2023

Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WP.CT 41 of 2023

Union of India and others
Vs.
Kumar Chandra Saren.

Mr. Madhu Jana.

... for the petitioners.

The affidavit of service filed in Court today is kept on record.

Despite service there is no representation on behalf of the respondent.

The dispute pertains to an interest on delayed payment of gratuity and leave salary. A representation was made by the respondent before the authorities raising the grievance in relation to a delayed payment of gratuity and encashment of the leave salary, but such representation remain in suspended animation as no decision was taken.

The Tribunal was approached alleging inaction on the part of the authorities in not addressing the issues as raised in the representation. By the impugned order, the Tribunal held that as the pension or gratuity is neither a bounty nor a bonanza given by the employer on superannuation but has acquired a valuable right and regarded as a property in hand and if there is a culpable delay in disbursement of such property, the rightful claim is entitled to an interest at the current market rate till the actual payment is made.

Though the scope of the writ petition was restricted to non-consideration of the representation yet we do not find any infirmity in the decision the moment the

Tribunal found the right to have been fructified and the liability of the employer to pay the interest. The Court should not encourage the litigation by directing the authorities to consider the representation as it augments further litigation to come after a decision is taken by the authorities on the basis of such representation.

The right, which is apparent, can be decided by the Tribunal or the Court irrespective of the fact that the representation made by the respondent is pending before the authorities. Exactly, the same has been done by the Tribunal and, therefore, we do not find any fault in this regard.

Time and again the question often arise as to whether any interest would be attracted on a delayed payment of gratuity or the other retiral benefits and it has all along been a consistent view of the Courts of the country that the gratuity is required to be paid on the date of superannuation and in the event there is any delay not necessitated by any plausible reasons, the employer must pay the interest on delayed payment of gratuity.

Obviously, the aforesaid decision has been taken on an accepted proposition of law that the gratuity cannot be said to be a bounty or an incentive or bonanza but creates a vested right into the employee on attaining superannuation and, therefore, he cannot be deprived of such legitimate claim. However, our attention is drawn to a circular dated 23rd October 1979 issued by the Railway Board wherein it is indicated that in the event of delay in payment of Death-cum-Retirement Gratuity, the matter should be examined and an interest shall be paid at the rate of 5 percent per annum for the period of three months after the gratuity becomes due till its actual payment.

It is, however, submitted by the learned Advocate

for the petitioners that if there is no laches and/or negligence which can be attributed to the conduct of the employer, the respondent should not be saddled with the payment of interest under the aforesaid circular.

The aforesaid contention is made from the text of the said circular wherein it is indicated that the interest will be allowed where it is clearly established that the payment of Death-cum-Retirement Gratuity was delayed because of the administrative lapses or the reasons beyond the control of the Railway servant concerned.

It is sought to be contended that the service book of the concerned respondent was taken in custody by the Central Bureau of Investigation, Kolkata in connection with a pending case and was returned after a considerable delay, which occasioned the delay in preparation and/or calculation of the gratuity. All the correspondences as it appear to have been made post attainment of the superannuation by the respondent.

Even if we considered the stand of the petitioners in this regard, there was no difficulty on the part of the petitioners to call for the service book for a limited purpose of calculating the Death-cum-Retirement Gratuity. The authorities could have kept a duplicate of the said service book as it usually done in such cases and, therefore, we do not find any impediment on the part of the petitioners in not disbursing the Death-cum-Retirement Gratuity to the respondent within a reasonable time.

However, considering the said circular, we find that the interest at the rate of 8 percent per annum is contrary to the aforesaid circular.

The order impugned is modified to the extent that instead of 8 percent, the respondent should be entitled to an interest at the rate of 5 percent to be calculated on expiration of three months from the date of

superannuation till its actual payment.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)