

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 5855 of 2012

Pradip Kumar Bhar
Vs.
The State of West Bengal & Ors.

For the petitioner : Mr. Susmita Dey (Basu)

For the respondent : Mr. N. C. Bihani
no.3.

Heard on : 17.01.2023 & 02.03.2023

Judgment on : 2nd March, 2023.

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, praying for release of gratuity and leave salary along with interest at the rate of 18 per cent.
2. It is the petitioner's case that the petitioner was employed with the Calcutta State Transport Corporation, being the respondent no.3 and joined the service as Assistant Engineer in terms of the appointment letter dated 28th November, 1974. The petitioner has since superannuated from service on and from 30th November, 2009. Despite superannuation, since the respondents

did not disburse gratuity and leave salary to the petitioner, the petitioner was constrained to file the present writ application.

3. Ms. Dey (Basu), learned advocate representing the petitioner submits that it is only at the intervention of this Hon'ble Court that both the gratuity and the leave salary, were disbursed in favour of the petitioner on 4th April, 2013. By drawing attention of this Court to a communication dated 20th November, 2009, forming part of the writ application, it is submitted that despite the fact that the gratuity had been sanctioned in favour of the petitioner, the respondents held back the same. She says ordinarily, gratuity is payable within 30 days from the date of retirement. In the present case the respondents held back the payment of gratuity. She says that the right to receive interest on gratuity is no longer *res integra*. In support of her contention, she places reliance on the following judgments: -

1) S. K. Dua v. State of Haryana & Anr., (2008) 3 SCC 44.

2) H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd., (2003) 3 SCC 40.

3) D. D. Tewari (Dead) through Legal Representatives v. Uttar Haryana Bijli Vitran Nigam Limited & Ors., (2014) 8 SCC 894.

4. Mr. Bihani, learned advocate representing the respondent no.3 on the other hand submitted that this Hon'ble Court in

connection with the another matter, having identified the financial difficulties faced by the respondent no.3, 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.3, who were similarly placed as of the writ petitioner. Such direction had been issued taking into consideration the mounting loss suffered by the respondent no.3 and the failure on the part of the respondent no.3 to meet its financial commitments.

5. Drawing attention of this Court to a scheme for the retired employees of the State Transport Undertakings, he submitted that the aforesaid scheme had been formulated (hereinafter referred to as the "said scheme") pursuant to the aforesaid direction passed by this Hon'ble Court. It is submitted that the said scheme in particular, takes into consideration the employees who had retired from service prior to 1st April, 2015.
6. By referring to paragraph 6.2 of the said scheme it is submitted that provisions for payment of interest have already been made in respect of all such retirees who are referred to therein as 'old retirees'. Mr. Bihani submits as per the said scheme, the petitioner is an old retiree and as such, he is at best entitled to 6 per cent interest on delayed payment of gratuity.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record. I am of the view that the petitioner's entitlement to interest on delayed payment of retiral dues cannot be disputed, as the right to receive interest on account of delayed payment is no longer *res integra*. The financial inability on the part of the respondent no.3 cannot disentitle the petitioner to receive minimum compensation in the form of interest. I find that the said scheme formulated pursuant to the direction passed by this Court, deals with employees of the State Transport Undertakings which includes the petitioner. The scheme, *inter alia*, provides for interest, on delayed payment of retiral dues at the rate of 6 per cent per annum.
8. Since, this Hon'ble Court has already accepted the aforesaid scheme, I would have ordinarily directed the respondent no.3 to act in terms of the aforesaid scheme and to pay interest at the rate of 6 per cent per annum, however, considering the fact that the respondent no.3 did not bother to adhere to the aforesaid scheme and held back payment of interest on delayed payment of gratuity, I am of the view that the respondent no.3 should be directed to pay interest at the rate of 7 (seven) per cent per annum on the retiral dues, from the date when the same became due up-to the date of actual payment.
9. Let the aforesaid payment be made within three months from date.

10. With the aforesaid direction, the writ application, being WPA 5855 of 2012 stands disposed of.
11. There shall be no order as to costs.
12. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)

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