

21.08.2023
SL No.7
Court No.8
(gc)

MAT 1243 of 2005

**Bhramar Chandra Kundu
Vs.
The State of West Bengal & Ors.**

1. The appellant is not represented, nor any accommodation is prayed for on behalf of the appellant. The matter was earlier adjourned on 2nd August, 2023. The appellant was also not present on the earlier occasion.
2. Although the appellant is not present, we do not agree with the reason given by the learned Single Judge denying payment of interest of gratuity merely because the petitioner had approached the writ court belatedly. The delay was not substantial in our view to deny such right. The statutory right to receive interest on delayed payment of gratuity for the reasons not attributable to the writ petitioner cannot be denied.
3. There may have been some delay in approaching this Court. However, the Constitutional Court shall not dismiss a writ petition merely on the ground of delay if it is satisfied that such dismissal would

be denial of justice. There is no period of limitation for filing a writ petition. However, exercise of jurisdiction under Article 226 being discretionary, this Court might decline relief on the ground of delay, if the Court deems it appropriate to do so.

4. In this case, the petitioner is legitimately entitled to interest for delayed payment of gratuity. Many persons similarly circumstanced, as the petitioners have been paid interest on gratuity pursuant to orders passed by different Benches of this Court. This court is not inclined to reject a good case on merits on the ground of delay. The delay has not given rise to any third party rights or interests. The granting of the relief prayed for in this writ petition will not unsettle the settled matters. The delay has not caused any prejudice to the respondents.
5. The gratuity becomes payable immediately on return and there cannot be any doubt that delay in payment of gratuity would attract interest.
6. Issue of whether delay in payment of gratuity would attract interest was decided in large catena of decisions including the

order of the Division Bench in FMA 725 of 2004 and FMA 731 of 2004 in which the respondent was directed to pay interest at the rate of 10% per annum for the delay in release of gratuity and about 81 writ petitions were disposed of with the same directions.

7. We may also refer to the decision of the Hon'ble Supreme Court in ***State of Uttar Pradesh & Ors. Vs. Dhirendra Pal Singh reported at 2017(1) SCC 49 (paragraph 9)***. The said paragraph reads as follows:-

“9. In State of Kerala Vs. M. Padmanabhan Nair, (1985) 1 SCC 429: 1985 SCC (L&S) 278, this Court has held that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on the retirement but are valuable rights in their hands, and any culpable delay in disbursement thereof must be visited with the penalty of payment of interest. In the said case the Court approved 6% p.a. interest on the amount of pension decreed by the trial court and affirmed by the High Court. As to the rate of interest on amount of gratuity, in Section 7(3-A) of the Payment of Gratuity Act, 1972, it is provided that if the amount of gratuity payable is not paid by the employer within the period specified in sub-section (3), the employer shall pay,

from the date on which 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. It further provides that no such interest shall be payable if the delay in 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. In the present case, there is no plea before us that the appellants had sought any permission in writing from the controlling authority. As to the delay on the part of the employee, it has come on the record that he made representations, whereafter he filed a suit in respect of withheld amount of gratuity and pension. In Y.K. Singla v. Punjab National Bank, (2013) 3 SCC 472, this Court, after discussing the issue relating to interest payable on the amount of gratuity not paid within time, directed that interest @ 8% p.a. shall be paid on the amount of gratuity.”

8. Following the aforesaid direction, we also dispose of the appeal by directing the appellant to compute interest of gratuity at the rate of 8% per annum on the unpaid amount of gratuity from the date of

retirement of the employee till the date of disbursement.

9. The entire exercise shall be completed within 8 weeks from date.

10. Under such circumstances, we set aside the order under appeal.

11. The appeal is allowed.

12. Accordingly, the appeal is disposed of.

13. However, there shall be no order as to costs.

14. Since the appellant is not represented, the department is directed to communicate this order to the appellant/writ petitioner on the address mentioned in the cause title in course of this week by Speed Post with A.D.

15. The Registrar Administration (L&OM) is directed to ensure compliance of this order.

16. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)