

May 03, 2023
(134) ARDR

WPA 10202 of 2023

Chandana Sen
Vs.
The Durgapur Projects Limited & Ors.

Adv. Swagatam Deb,
...for the petitioner.
Adv. Sujit Sankar Koley,
....for DPL.

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

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

The petitioner's husband died on October 21, 2017.
The gratuity dues of the writ petitioner's deceased husband
aggregating Rs.9,23,815/- was paid on December 20, 2021.
Neither quantum of gratuity nor the quantum of leave
salary nor the date of payment is in dispute.

Mr. Deb, Learned Counsel appearing on behalf of the
writ petitioner, prays for interest on gratuity payable to the
writ petitioner from October 22, 2017 (the date succeeding
the date of death of the deceased husband) till December
20, 2021 (the date on which the dues were actually paid)
and the quantum of leave salary for 121.5 days along with
interest.

The issue has been squarely settled by various Judgements passed by 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 his gratuity dues from October 22, 2021 (the date succeeding the date of death of the deceased husband) till the date of payment at the rate of 6% per annum and the quantum of leave salary for 121.5 days along with interest payable from October 22, 2021 (the date succeeding the date of death of the deceased husband) till the date of its actual payment.

The petitioner is entitled to claim such interest. A beneficial reference may be made to an order/judgment passed by the Hon'ble Division Bench in F.M.A. 3942 of 2016 (**Amarnath Tiwari & Ors. vs. State of West Bengal & Ors.**) 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 respondent authority/DPL is directed to make 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 be 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 10202 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 his retirement the occupation charges for the said quarter will be deducted from the retiral benefits 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.)