Court No.

01.9.2023

(Item No. 10)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 12032 of 2021

Sajal Kumar Banerjee
VS
United India Insurance Company Limited & Ors.

Mr. S. Sanyal
Mr. Sutirtha Das
...... for the petitioner
Mr. S. N. Ganguly
Mr. Siddhartha Goswami
Mr. Rahul Sharma
... for the respondents

The only pending issue left to be adjudicated in this writ petition is the interest component payable by the respondent No. 1, being the employer to the petitioner, the employee, since a portion of the principal sum which was claimed to be due to the petitioner from his employer the respondent No. 1 has already been paid and the petitioner does not press for the residual amounts. The payment in respect of arrears salary has been paid on 30th December, 2019. The aggregate amount of arrears of salary was Rs.35,73,129/- after deducting arrears of Provident Fund (in short P.F.) for a sum of Rs.2,61,558/- and tax deducted at source (TDS) for Rs.10,71,939/- a sum of Rs.22,39,632/- was paid on 30th December, 2019. The amount on account of leave encashment was paid on 10th February, 2020. The leave encashment amount of Rs.4,82,727/- with accrual interest after deducting TDS of Rs.82,865/- from

Rs.5,65,592/- was paid on 10th February, 2020. The aggregate amount of gratuity was Rs.10,37,400/-. With interest up to the date of payment aggregating to Rs.3,53,000/- added thereto less the TDS amount for Rs.1,17,120/- came to Rs.12,73,280/- which paid on 10th January, 2020. The pension arrears of Rs.28,50,417/- after deducting TDS of Rs.6,76,130/- came to Rs.21,74,287/-. The petitioner was also entitled to a sum of Rs.9,68,635/- on account of commutation of pension. After adding the two figures and deduction of the TDS therefrom came to Rs.31,42,922/- which was paid on 27th April, 2020.

So far as other claims made by the petitioner are concerned, they were turned down by the respondents. The petitioner has already submitted that he does not want to pursue such claims and that he prays for interest on the amounts under the different heads which has been paid belatedly. The respondents oppose this prayer for payment of interest.

It is no more res integra that the retiral benefits of an employee are not bounty. The courts have held that in default or delay in paying the retiral benefits the employer has to pay interest to compensate the employee who remained out of pocket by such sum while on the other hand the employer derived benefit of the money which he paid belatedly.

Petitioner in this case has approached the court without any inordinate delay which will disentitle the petitioner from claiming interest. The cause to receive interest is also a continuous cause.

In the instant case admittedly there is a delay in paying the retiral benefits to the petitioner. only the gratuity amount has been paid with up to date interest. So far as the arrears of salary, leave encashment, arrears of pension and amount receivable on commutation of pension have been paid belatedly. The petitioner, therefore, is entitled to claim and receive interest on the amounts under different heads as and when they fell due till the date of actual due less any interest already paid.

The salary for each month is payable at the beginning of the next month. In this manner the salary for the first month which remained outstanding up to the date of payment attracts interest for the entire period and as such the petitioner is entitled to receive interest on that month's salary up to 30th December, 2019 from the date it fell due. Similarly for the rest of the months interest accrued from the date when it fell due till up to 30th December, 2019. Leave encashment is receivable immediately upon retirement. The petitioner therefore is entitled to interest on leave encashment from his date of retirement until the amount was paid on 10th February, 2022 less interest, if any already paid. The pension amount for each month like the salary fell due after one month from the date of retirement of the petitioner. the interest on the arrears of pension amount has to be calculated in the same manner as in case of salary taking into account that the arrears of pension was paid only on 27th April, 2020. So far as the pension commutation amount is concerned the petitioner became entitled to be same immediately upon retirement on having made known his decision to commute the pension to his employment. The computation amount therefore fell due on his retirement and shall attract interest for the period from 1st May, 2014 till 27th April, 2020 when such amount was paid.

The petitioner has claimed interest @ 7.5% per annum. The rate of interest claimed appears to be on the higher side though gratuity, a retiral benefit attracts statutory rate of interest which is at present 10% per annum. However, taking into account the judgment of the Hon'ble Supreme Court reported in ***2021(11) Supreme Court Cases 543 (State of Andhra Pradesh & Anr. Vs Dinavahi Lakshmi Kameswari)*** where the Hon'ble Supreme Court has allowed interest on arrears of salary @ 6% per annum. Keeping in mind the said ratio, interest to the petitioner allowed @ 6% per annum on his principal amount due. The interest shall be computed in the manner as indicated in this order and shall be paid by the respondent No. 1 to the petitioner by 6th October, 2023 after deduction of any interest already paid against such heads.

The writ petition is accordingly disposed of.

There shall be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Arindam Mukherjee, J.)