

WPA 13633 of 2023**Tapan Kumar Jana**
Vs.**Calcutta State Transport Corporation & Ors.**Mr. Manas Kumar Ghosh
Ms. Susmita Dey (Basu)

....for the petitioner

Mr. Amal Kumar Sen
Mr. Sabyasachi Mondal

...for the CSTC

The petitioner retired as an employee of Calcutta State Transport Corporation (CSTC) on June 30, 2020. The grievance of the petitioner is that despite expiry of more than three years the gratuity dues of the petitioner have not been disbursed yet. Therefore, the petitioner had no recourse but to approach this Court in its high prerogative writ jurisdiction.

Mr. Ghosh, learned counsel appearing on behalf of the petitioner submits that during the service tenure of the petitioner a sum of Rs.90,000/- was taken on loan from the employer.

By an order dated April 22, 2008 passed by a Coordinate Bench of this Hon'ble Court, the respondent authority was directed to take appropriate steps for recovery of the admitted loan amount of Rs.90,000/-. For the disputed loan amount of

Rs.3,00,000/-, the authorities concerned were directed to take a reasoned decision.

Pursuant to the order passed by the Coordinate Bench on April 22, 2008, the Chairman, CSTC took a reasoned decision. In the reasoned decision, it was held that the amount of Rs.90,000/- (undisputed loan amount) along with interest should be repaid by the petitioner. In the event, the writ petitioner failed to repay the said amount, the same would be realised directly from his salary by way of monthly installments until the settlement of the amount, in its entirety.

It is submitted on behalf of the petitioner that the admitted loan amount of Rs.90,000/- along with accrued interest has been recovered by CSTC by way of monthly installments. Such a position is not in dispute. Therefore, it is contended that there is no legitimate reason for withholding payment of gratuity dues of the petitioner.

Mr. Sen, learned Additional Government Pleader appears on behalf of the CSTC. On June 28, 2023, when the matter came up for initial hearing he prayed for time to take necessary instructions in the matter. Time to take necessary instructions was also extended on July 12, 2023. However, such instructions are not brought on record even today.

On behalf of CSTC, it is submitted that there is a dispute with regard to non-payment of loan of Rs.3,00,000/- to Howrah District Central Cooperative Bank Limited. In view of pendency of such loan the gratuity dues of the petitioner were not being settled. An administrative order dated February 14, 2020 issued by the Administrative Personnel Officer, Howrah Depot, CSTC is referred to. The petitioner was directed to bring necessary documents for resolution of the dispute regarding non-payment of the disputed loan that is purportedly payable to the Cooperative Bank, prior to the disbursement of the gratuity dues.

By an order dated June 28, 2023, this Court recorded its *prima facie* view that the employer cannot withhold the gratuity dues of a retired employee unless the employer suffered any loss due to the acts/misconduct/negligence of the retired employee.

Section 4(6) of the Payment of Gratuity Act, 1972 is reproduced hereinbelow:

“4(6) Notwithstanding anything contained in sub-section (1),-

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited –

- (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or*
- (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment”*

Admittedly, the Cooperative Bank is not the employer of the petitioner. Admittedly, the amount of loan taken by the petitioner from the Cooperative Bank is also in dispute.

Therefore, this Court is of the view that there was no legitimate reason for CSTC to withhold the payment of gratuity dues to the petitioner/retired employee. The action on the part of the CSTC is illegal and arbitrary and in colourable exercise of power. Furthermore, it could not be submitted on behalf of the CSTC whether the statutory obligation of depositing the *disputed* amount of gratuity with the controlling authority has been fulfilled by the employer under the 1972 Act. In view of such lack of instructions, it is *deemed* by this Court that the

statutory obligation has not been complied with by the employer/CSTC. Therefore, this Court directs payment of the gratuity amount within a period of one month from the date of this order along with interest @ 6% per annum from July 1, 2020 till the date of disbursal of the entirety of the dues of the petitioner.

This Court has not appreciated the harassing attitude of the employer with regard to its retired employee.

With the directions and observations aforesaid, **WPA 13633 of 2023** is **disposed of**.

All parties are to act on a server copy of this order downloaded from the official website of this Hon'ble Court.

(Lapita Banerji, J)