

WPA 17386 of 2022

Benu Mitra
Vs.
The State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee
Mr. Sandipan Das
Ms. Priyanka Paul
Ms. Indrani Roy

....for the petitioner

Mr. Sayantan Bose
Ms. Ankita Chaudhury

...for the respondent Nos. 3 to 5

Mr. Pinaki Dhole
Ms. Ananya Neogi

...for the State

The petitioner's claim is that his retiral benefits were arbitrarily and illegally withheld by the employer/ West Bengal Handicrafts Development Corporation Limited (WBHDCL) with effect from the date of his superannuation on June 30, 2013. Since the retiral benefits were not disbursed to the petitioner, a previous writ petition being WPA 28215(W) of 2014 was moved before this Hon'ble Court.

By an order dated November 27, 2019 the Hon'ble Co-ordinate Bench directed that upon receiving a report from the Officer, Anti Cheating and Fraud, CID, West Bengal, the Managing Director, WBHDCL will take a final decision regarding disbursement of retiral benefits of the petitioner. Since no case was

proved against the petitioner, the retiral benefits were disbursed on January 16, 2020. The retiral benefits aggregating an amount of Rs.7,98,052/- was disbursed to the petitioner on January 16., 2020.

The petitioner has prayed for interest from July 1, 2013 (the date subsequent to the date of retirement) till January 16, 2020 (the date on which the retiral dues have been actually paid to the petitioner).

Mr. Bose, learned Counsel appears on behalf of the employer/ WBHDCL and submits that the petitioner has not made necessary application for disbursement of the gratuity amount. He further submits that under Section 4(6) of the Payment of Gratuity Act, 1972 an employee whose service has been terminated for any act, willful omission or negligence causing any damage or loss or destruction of the property of the employer or terminated due to riotous or disorderly conduct or terminated due to an offence of moral turpitude was entitled to withhold the gratuity amount.

Therefore, he submits that there is no question of payment of interest to the petitioner.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the services of the petitioner was not terminated under Section 4(6) of the 1972 Act. The petitioner was superannuated from her services with

effect from June 30, 2013. Under Section 7(2) of the 1972 Act it is the duty of the employer to determine the amount of gratuity and give a notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity, whether or not the application is made by the employee in terms of Section 7(1).

This Court further finds that under Section 7(4) (a) of the 1972 Act, if there is any dispute to the amount of gratuity payable to an employee or to the admissibility of the claim or in relation to an employee for payment of gratuity or to any person entitled to receive the gratuity the employer has a mandatory obligation to deposit with the controlling authority such amount as he admits to be payable by him. The language of Section 7(4)(a) states that the employer **shall** deposit with the controlling authority.

This Court finds that no admissible amount was deposited with the controlling authority as is the obligation of the employer under the Act. Furthermore, the case of **(Dr. A. Selvaraj vs. C.B.M. College and others)** reported in (2022) 4 SCC 627 clearly holds that any delay in making payment of retiral benefits and settling the dues of the employees would entitle the employee to payment of interest on delayed payment.

Since the CID closed the investigation without any adverse report against the petitioner, this Court holds that the employee is not responsible for the delayed disbursement of the retiral dues. The employer has not fulfilled its obligation under the law.

In the light of the observations above, this Court directs interest @6% per annum payable to the petitioner from July 1, 2013 till January 16, 2020. Such interest is to be paid to the petitioner within three months from date.

In the event such interest is not paid to the petitioner within three months the said rate will stand enhanced to 8% per annum payable to the writ petitioner from July 1, 2013 till the actual date of such payment.

With the aforesaid direction **WPA 17386 of 2022** is **disposed of**.

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

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Lapita Banerji, J)