06.02.2023 **WPST 115 of 2022**

Court : 04
Item : 42
Matter : **WPST**
Status : DO
Transcriber : nandy

Gangaram Mondal
Vs.
The State of West Bengal & Ors.

Mr. Sajal Kanti Bhattacharya, Advocate
Mr. Sankar Halder, Advocate
Mr. Sarthak Burman, Advocate
……for the Petitioner
Mr. Tapan Kumar Mukherjee, Ld. AGP
Mr. Biswabrata Basu Mallick, Advocate
Mr. Sayan Ganguly, Advocate
……for the State
Mr. S.K. Bhattacharya, Advocate
Mr. Suman Basu, Advocate
……for the Respondent No. 5

The writ-petitioner changed the stand in course of hearing and restricts his relief over the release of gratuity, leave salary and other pecuniary benefits entitled under the relevant Rules.

In order to put the fact straight, the Tribunal was approached challenging the order of punishment imposed upon the petitioner whereby and whereunder the authority permanently withheld the pension. The Tribunal dismissed the said application solely on the ground of limitation as the order of punishment passed on 13.06.2011 was sought to be challenged before the Tribunal in the year 2016.

A point is sought to be taken at the behest of the appearing respondents that the moment the pension has been withheld permanently, the relevant Rules includes the amount of gratuity unless the same is in conta-distinction to it and, therefore, it should be construed as such. According to the appearing Counsel for the respondents, the identical provision could be found under Rule 3 of CCS (Pension) Rules, 1972 which came for interpretation before the Supreme Court in case of ***Jarnail Singh Vs. Secretary, Ministry of Home Affairs & Ors.*** reported in ***(1993) 1 SCC 47***. It is thus contended that the moment definition of a pension engulfs gratuity, in absence of its applicability in contra-distinction, gratuity would not be payable to the delinquent.

The aforesaid point has been taken because of the changed stand taken by the writ-petitioner in the instant writ-petition. Our attention is drawn to the facts which emanates from the record that during the currency of the disciplinary proceeding, the writ-petitioner approached the Tribunal by filing OA 816 of 2010 which remained pending for a pretty long time. During the pendency of the tribunal application the final order of imposing punishment was passed upon the petitioner and the aforesaid subsequent provision was brought to the notice of the Tribunal.

The said tribunal application was disposed of, taking into account the fact that the said order of punishment staying the pension permanently has already been passed, directing the authority to take steps to release gratuity, leave salary, G.I. and GPF within six weeks from the date of communication of the said order. The plea which is sought to be agitated now was available to the said respondent at the time of final disposal of the earlier writ-petition. It could have been very well said that the moment the pension is permanently withheld; the petitioner is not entitled to gratuity. Such point does not appear to have been taken when the final order was passed, at least, the tribunal application does not reveal so. The point ought to have been taken, having not taken being an integral part of the issue involved therein, shall not be permitted to be re-agitated in the subsequent proceeding by virtue of Explanation (iv) to Section 11 of the Code of Civil Procedure. Even apart, the order directing the gratuity and the other pecuniary incidences of the service passed by the Tribunal has not been challenged by the State-respondent as of now and, therefore, the said order stares at their face and such plea cannot invite the Court to interfere with the same in a subsequent proceeding.

We thus do not venture to go into the aforesaid aspects in view of the facts discussed above nor do we find that the State can take such plea in a subsequent proceeding. The matter can be viewed from another angle that the moment the Court directed the gratuity to be paid upon noticing that the pension has been permanently withheld it would imply that the Tribunal was conscious of the relevant provisions which has sought to be relied in the instant case.

The definition clause defining the pension is not free from any exception. Though it is indicated that the pension includes gratuity but the exception is carved out where the pension is not contra-distinction to gratuity.

We thus do not find any justification in the stand of the State in this regard. Furthermore, we cannot ignore the fact that the concerned authority has already released the gratuity to the petitioner and, therefore, it is too late in a day to contend that the gratuity is not payable.

So far as the payment of leave salary, G.I. and GPF are concerned, the parties are not ad idem thereupon.

According to the State, those components have been paid. It is disputed by the learned Advocate for the writ-petitioner.

In view of the aforesaid conflicting stand having been taken before us and bearing in mind that the direction was already passed upon the State to make such payment in an earlier tribunal application being OA 816 of 2010, this writ-petition being **WPST 115 of 2022** is **disposed of** directing the State to release the pecuniary entitlement as per the service condition barring the pension, to the petitioner within four weeks from date, if the same has not been paid already.

It goes without saying that any amount which is found due to the writ-petitioner on such component, shall bear an interest at the rate of 6% per annum, from the date of superannuation till the actual payment having already made.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)