

27.09.2023
DL-123
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 22740 of 2023

Bani Sarkar
Vs.
The Durgapur Projects Limited & Ors.

Mr. Swagatam Deb
....for the petitioner.

Mr. S. S. 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 retired from his service on December 31, 2019. The gratuity dues of the writ petitioner's deceased husband aggregating Rs.3,58,059/- was paid on March 8, 2021. Neither quantum of gratuity nor the date of payment is in dispute. The petitioner's husband died on August 24, 2021.

Mr. Deb, learned Counsel, appearing on behalf of the writ petitioner prays for interest on gratuity amount payable to the writ petitioner from January 1, 2020 (the date succeeding the date of retirement of the petitioner's husband) till March 8, 2021 (the date on which the gratuity dues were actually paid).

The learned counsel appearing on behalf of the writ petitioner also prays for earned leave of 265 days, which has not been paid till date. He further prays

for interest on the earned leave, due and payable to the writ petitioner's husband.

The number of days of earned leave, due and payable to the petitioner is not in dispute.

The issue has been squarely settled by various Judgements passed by a 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 gratuity amount and interest on the delayed payment of her husband's gratuity dues from January 1, 2020 till the date of actual payment at the rate of 6% per annum.

The writ petitioner is also entitled to earned leave of 265 days and interest thereon @ 6% per annum from January 1, 2020 till the date on which the actual payment is made.

The respondent authority/DPL is directed to pay 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 stand enhanced to 10% per annum being the statutory rate under the payment of Gratuity Act, 1972.

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.

With the directions aforesaid, the writ petition, being **WPA 22740 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 the death of the deceased employee, the occupation charges for the said quarter will be deducted from the retiral benefits of the deceased employee 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.)