11.10.2023
DL-168
(SD)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 23623 of 2023

Srikrishna Das
Vs.
The State of West Bengal & Ors.

Mr. Srinjay Sengupta,
Mr. Saurav Roy,
Mr. Narattam Acharyya,
Mr. Ankush Ghosh
....for the petitioner.
Ms. Deblina Chattaraj,
Ms. Angana Dutta
.....for WBTCL.

Affidavit of service filed in Court today is retained with the records.

The writ petitioner was a permanent employee of the West Bengal Transport Corporation Limited (in short 'the WBTCL') previously known as the Calcutta Tramways Company (1978) Limited. The writ petitioner retired from his service on February 28, 2014. A sum of Rs.2,15,724/- being provident fund dues were disbursed to the petitioner belatedly on May 21, 2014. Further a sum of Rs.8,44,856/- being gratuity, leave salary and were disbursed to the petitioner also belatedly on September 26, 2014. The writ petitioner prays for interest on delayed disbursement of such retiral dues as well as interest on delayed payment of gratuity amount.

The issue of payment of interest on delayed payment of retiral benefits has been considered by the Hon'ble Supreme Court in two judgments reported in 2021 (11) SCC 543 **(State of Andhra Pradesh & Anr. Vs. Dinavahi Lakshmi Kameswari)** and also in 2022 (4) SCC 627 **(Dr. A. Selvaraj Vs. CBM College & Ors.)**. In

Selvaraj (supra) it was held that the delay in payment of retiral benefits was due to no fault on the part of the petitioner. It was an obligation on the part of the employer to process the retiral benefits and pay the same within one month of the date of the petitioner's retirement. Since the payment was not made within one month, the interest was held to date back to the petitioner's date of retirement.

Following the aforesaid judgements of the Apex Court and also the judgement passed by Co-ordinate Bench of this Hon'ble Court in WPO No.2279 of 2022 (**Swapan Kumar Das vs. The State of West Bengal**), this Court holds that interest at the rate of 6 per cent per annum on the Provident Fund amount Rs.2,15,724/- should be paid by the respondent company to the petitioner from March 1, 2014 (the date succeeding the date of retirement) to May 21, 2014 (the date on which the retiral benefits have actually been paid) and on the gratuity, leave salary of Rs. 8,44,856/- should be paid by the respondent company to the petitioner from March 1, 2014 (the date succeeding the date of retirement) to September 26, 2014 (the date on which the gratuity amount have actually been paid) for late disbursement of post retiral benefits within three months from date. In the event there is any default in payment of interest within the stipulated period, the rate of interest will stand increased to 10 per cent per annum being the rate payable at present under the Payment of Gratuities 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.

Since affidavits have not been invited in the present writ petition, the allegations made in the writ petition are deemed not to have been admitted by the parties.

With the aforesaid directions, the writ petition, being **WPA 23623 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.

Urgent certified website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(**Lapita Banerji, J.**)