

WPA 26250 of 2022

Sri Debasis Basu
Vs.
The Union of India & Ors.

Mr. Arunangshu Chakraborty
Mr. Avijit Bera
Ms. Geniya Mukherjee
Ms. Zeba Rashid

....for the petitioner

Mr. Kalyan Kumar Chakraborty

...for the respondent Nos. 1 to 3

Ms. Debjani Ray

....for the private respondents

The grievance of the petitioner is that the pension, gratuity and the leave encashment benefits along with other retiral benefits, if any, should be disbursed by the employer /Shyama Prasad Mookerjee Port (formally known as, Calcutta Port Trust). The petitioner applied for voluntary retirement from service in 2022. The same was allowed by the authorities concerned with effect from June 1, 2022. Admittedly, disciplinary proceedings were initiated on April 28, 2022. During the pendency of the disciplinary proceedings the petitioner was allowed to retire from service voluntarily.

A previous writ petition being WPA 2333 of 2022 was filed by the private respondent being the wife of the petitioner. It was alleged in the said writ petition

that the petitioner failed and neglected to maintain his wife and minor daughter. A Coordinate Bench of this Hon'ble Court directed payment of a sum of money by the employer to the school authorities of the minor child. The Coordinate Bench was of the view that an adolescent child was dragged into marital discord between the parties. The private respondent also obtained interim orders for payment of educational expenses of the daughter from the Court of the learned Magistrate. Monthly maintenance was directed to be paid to the private respondent for the upkeep of the minor daughter.

It is submitted that the said writ petition is pending adjudication.

In the present writ petition the petitioner has prayed for release of gratuity dues and the pensionary dues as stated hereinabove.

Mr. A. Chakraborty, learned counsel appearing on behalf of the petitioner submits that the employer had no legitimate reason for withholding the pensionary dues and the gratuity dues of the petitioner.

Mr. K.K. Chakraborty, learned counsel appears on behalf of the employer/Kolkata Port Trust and submits that since disciplinary proceedings have been initiated on April 28 of 2022 before the voluntary retirement of the petitioner with effect from June 1,

2022, the pensionary benefits and the gratuity dues of the petitioner have not been disbursed till date. Only the sum for non-contributory provident fund dues have been disbursed. He refers to the provisions of the Kolkata Port Trust Employees' (Pension) Regulations, 1988 in support of his contention.

Ms. Ray, learned counsel appears on behalf of the private respondent and submits that since the petitioner failed and neglected to pay the monthly maintenance as directed by the learned Magistrate, the pensionary dues and the gratuity dues of the petitioner should not be disbursed till the completion of the disciplinary proceedings. She draws the attention of the Court to the Calcutta Port Trust Employees (Conduct Regulations) 1987 to contend that an employee is reported to have conducted himself in a manner unbecoming of a board employee, by neglect of his spouse and family or by deliberately misbehaving with superior officers or other employees. Due to such unbecoming conduct the employer can take action against an employee for 'misconduct'.

Considering the rival submissions of the parties and the materials placed on records, this Court is of the view that the employer/the Chairman of the Kolkata Port Trust can only withhold or withdraw the pension of an employee under certain conditions. The conditions will appear from Clause 7 of the Calcutta Port Trust

Employees' (Pension) Regulations, 1988. Clause 7 is reproduced hereinafter:

7. Right of Chairman to withhold or withdraw pension.

(1) The Chairman reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period and or ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Board, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:"

Under Section 4(6) of the Payment of Gratuity Act, 1972, the provisions for withholding gratuity by an employer are clearly stipulated. Section 4(6) is reproduced herein below:

"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.”*

In the light of the discussions above, this Court is of the view that the employer/Calcutta Port Trust could not have withheld the pensionary benefits as well as the gratuity dues of the employee/the petitioner in terms of the statutory provision and the other applicable rules and regulations. Any dispute between the private respondent and the petitioner are in the nature of civil dispute which has to be adjudicated/agitated before a Civil forum.

In the circumstances, this Court directs the payment of the pensionary benefits along with the arrears of pension and the gratuity dues to be paid by the employer/Calcutta Port Trust within a period of three months from date.

With the directions aforesaid, **WPA 26250 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)

Later:

The prayer for stay of the operation of the above stated order is made on behalf of the private respondent.

Such prayer is considered and refused.

(Lapita Banerji, J)