

42
20.12.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 26110 of 2023

**Jharna Sur
-versus
The State of West Bengal & Ors.**

**Mr. Rananeesh Guha Thakurta,
Ms. Seujiti Sengupta,
Ms. Dipa Roy.
...For the Petitioner.**

**Mr. Dipak Kumar Mukherjee,
Mr. Rajib Mukherjee,
Ms. Shyreyasi Bhaduri.
...For the Bhatpara Municipality.**

**Mr. Amitava Chowdhury,
Mr. Samrat Paul.
...For the State.**

Affidavit-in-opposition and affidavit-in-reply
thereto filed in Court today are taken on record.

The order dated 12th September, 2023 passed by
the Chairperson of the Bhatpara Municipality rejecting
the prayer of the petitioner for payment of interest on
account of the delayed payment of gratuity is impugned
in the instant writ petition.

The petitioner retired as an employee of Bhatpara
Municipality in the year 2016 and received the gratuity
amount in the year 2023 only after the petitioner filed a
writ petition before this Court followed by an

application for contempt. On the threat of contempt, the gratuity amount of the petitioner was released.

The earlier writ petition filed by the petitioner was disposed of by directing the Municipality to pay the retirement dues including gratuity. The question of granting interest was left open and not decided by the Court. At the time of disposal of the contempt application the petitioner was granted liberty to take steps to claim interest on delayed payment of gratuity in accordance with law. The petitioner thereafter, applied for obtaining interest. The same has been rejected relying on the principle of 'doctrine of waiver and estoppel'.

The Municipality vehemently opposes the prayer for interest on account of the delayed payment of gratuity. The Municipality has filed affidavit-in-opposition relying upon the principle of waiver and estoppel. It has been submitted that as the said prayer of the petitioner was not allowed by the Court on the earlier occasion, the petitioner is estopped from raising the issue of payment of interest. It has to be taken that the petitioner has waived his right to claim interest.

In support of the said submission, the Municipality relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of **BSNL & Ors. – vs- Subash Chandra Kanchan & Anr.** reported in **2006(8) SCC 279** paragraph 20.

In the said matter the Hon'ble Supreme Court relied upon Order 3 Rule 1 of the Code of Civil Procedure and held that a person may have a legal right but if the same is waived, enforcement thereto cannot be insisted.

According to the Municipality, the petitioner waived the right to claim interest and accordingly, the prayer for interest at this stage cannot be entertained.

Provision of Order 14 Rule 2 of Code of Civil Procedure has also been relied upon.

I have heard and considered the submissions made on behalf of both the parties. The Court while disposing of the earlier writ petition clearly recorded that gratuity is not charity and it is an entitlement of the employee. The Court took note of the fact that terminal dues of the petitioner could not be released on account of paucity of funds. The Court permitted the Municipality to approach the government for release of funds.

The Court further recorded that the quarrel between the State and the Municipality with regard to release of funds cannot affect the right of retired employee to get his gratuity. The same is oppressive, harassive and violative of the rights of senior citizen.

The Court was conscious of the fact that the Municipality pleaded paucity of funds for release of the terminal dues. In such a situation, the Court permitted the Municipality to proceed with payment of the principal amount and the Court left the issue of interest open. The Court never decided the issue of interest at all. The Court was conscious that the employee was entitled to receive the amount with interest but the Court intended to permit the Municipality to pay the principal amount first and thereafter deal with the interest part.

At the time of disposal of the contempt application, the Court granted liberty to the petitioner to take necessary steps for claiming interest. The entitlement of the petitioner to claim interest was never shut out by the Court. On the contrary, the same was left open to be decided in a subsequent proceeding.

It is seen that the employee retired long ago and the payment of gratuity was made only after the petitioner filed the writ petition followed by the contempt application. The employer is duty bound to pay interest on account of the delay in making the terminal payment. The employer does not have any right to sit over the terminal dues of a retired employee as the same are not bounty at the hands of the employer to be disbursed in favour of the employee as per the sweet will and convenience of the employer.

The Municipality being a 'State' under Article 12 of the Constitution of India ought not to raise any technical issue to deprive the retired employee from his legal dues. The Municipality being an organ of the State ought to act as a model employer and should have released the dues to the employee immediately upon his retirement. In the instant case, the gratuity stood released long after retirement of the employee. Under such circumstances, the Municipality cannot be heard to submit that interest will not be paid.

In view of the above, the impugned order of rejection is set aside. The Municipality is directed to pay interest @10% PA on the gratuity amount from the date on which it fell due till the date of actual payment. If the aforesaid amount is not disbursed within a period of eight weeks from today, the Municipality will be bound to pay to the employee additional interest of 3%

PA i.e. $10+3=13\%$ PA on account of delayed payment of gratuity to be calculated on the due amount from the date it became payable till the date of actual payment.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)