

14.07.2023
DL-209
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 26947 of 2015
with
CAN 1 of 2023

M/s. Food Corporation of India & Anr.
Vs.
Deputy Chief Labour Commissioner (Central)
Kolkata & Ors.

Mr. Debdutta Basu
....for the applicant/respondent no.3.

Mr. Saptarshi Dutt,
Mr. Rajsekhar Basu
....for FCI/petitioners.

In Re: CAN 1 of 2023

This is an application for disbursal of the gratuity dues of the applicant who retired as an employee of Food Corporation of India (FCI) on January 31, 2014.

An order of penalty was initially passed by the Disciplinary Authority and affirmed by the Appellate Authority. The Reviewing Authority by its order dated December 16, 2019 set aside the penalty that was imposed on the applicant even though it was held that some employees were responsible for the pecuniary loss caused to the Corporation on account of huge quantum of shortages in the wheat, rice and paddy stock. After his retirement, the applicant prayed for disbursal of the amount by the Controlling

Authority. The Controlling Authority found in favour of the applicant and computed the amount of gratuity along with interest up to the date of the order passed on February 23, 2015. Thereafter, the order of the Controlling Authority was challenged. However, the order of the Controlling Authority was affirmed by the Appellate Authority.

Mr. Dutt, learned counsel appearing on behalf of FCI submits that no interest is due and payable to the applicant during the pendency of the disciplinary proceedings since the Reviewing Authority exonerated the applicant on technical grounds and not on merits.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the gratuity dues of a retired employee could only be held by the employer in terms of Section 4 (6) of the Payment of Gratuity Act, 1972. Section 4 (6) of the Payment of Gratuity Act, 1972 is reproduced hereinafter:

“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.”*

This Court is of the view that the applicant has not been terminated for any act of wilful omission or negligence causing damage or loss to, or destruction of property belonging to the employer. Therefore, no amount of gratuity can be forfeited by the employer. Since the petitioner has been exonerated by the Reviewing Authority, the applicant will also be entitled to payment of interest on the delayed disbursal of the gratuity amount. The Controlling Authority by its order dated February 23, 2015 directed an amount of Rs.8,22,412/- to be paid to the applicant on account of principal along with interest to the tune of Rs.34,267/- payable to the applicant @ 10% per annum.

Such amount will be disbursed to the applicant within 3 months from the date of order. Furthermore, the applicant will be entitled to interest @ 6% per annum from February 24, 2015 till the date of actual disbursement of the arrears of the gratuity dues along with interest calculated by the Controlling Authority.

With the directions aforesaid, **CAN 1 of 2023 is disposed of.**

In the event any amount has already been paid by the Provident Fund Authorities, the same may be deducted from the amount due and payable to the applicant.

In Re: WPA 26947 of 2015

It is submitted by the parties that nothing further remains to be adjudicated in the present writ petition.

In such view of the matter, **WPA 26947 of 2015 is disposed of.**

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

(Lapita Banerji, J.)