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12.05.2023
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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side

WPA 520 of 2023

Prabir Chakraborty
versus
Special Secretary, Government of West Bengal
Animal Resources Development Department & Ors.

Mr. Jagriti Mishra,
Mr. Debayan Goswami,
Ms. Mrinmoyee Das
... for the petitioner.
Mr. Subir Kumar Saha,
Mr. Momenur Rahman
....for the State.

The petitioner was an employee of Himalayan Co-operative Milk Producer's Union Limited (hereinafter referred to as HIMUL). The petitioner retired from the services of HIMUL on 31st April, 2013 and was paid the gratuity amount on 1st April, 2018 for a sum of Rs.5,13,076/-. The petitioner is seeking interest on delayed payment of gratuity amount of Rs.5,13,076/- by filing the instant writ petition on 28th February, 2023.

The petitioner says that similarly placed persons had approached this Court and had received the benefit pursuant to orders passed by this Court. No specific order has, however, been placed before the Court.

It, however, appears from a memo dated 26th November, 2020 issued by the Chief Executive Officer, HIMUL & Additional District Magistrate, Darjeeling addressed to the Managing Director, West Bengal Co-Operative Milk Producer's Federation Ltd., a copy whereof is annexed to the writ petition, that the sum received by the HIMUL to the tune or Rs.13,23,418/- towards payment of interest on gratuity has been fully disbursed to the retired employees and there are other employees similarly placed like the beneficiaries who may claim for interest on delayed payment of gratuity.

The petitioner also says he was under the belief that the interest on delayed payment of gratuity will be paid to him as has been done by the employer to other employees similarly paced, but the employer later expressed its inability to pay interest for the delayed payment o gratuity in absence of any specific order.

On behalf of the employer/ HIMUL it is submitted that the petitioner is required to apply to the competent authority under the provisions of Payment of Gratuity Act, 1972 and only after exhausting the statutory remedy, shall be entitled to file and maintain this writ petition. The respondents also places a statement of facts prepared by the Chief Executive Officer, HIMUL & Additional District Magistrate, Darjeeling in support of their contention. The statement of facts handed over to Court is taken on record.

After hearing the parties and considering the materials on record, it is clear that there is no dispute as to the amount payable on account of gratuity. The amount has already been paid, but at a belated stage for which the petitioner is asking for interest. In absence of any dispute, the contention of the respondents, a State managed agency, that the petitioner should approach the competent authority under the 1972 Act particularly after they themselves had delayed in paying the gratuity is untenable. It will be also harsh to refer the petitioner to the competent authority under 1972 Act only for interest on account of delayed payment of gratuity. That apart and in any event, the Hon'ble Supreme Court in the judgment reported in **(2008) 3 SCC 44** (**S. K. Dua vs. State of Haryana & Anr.**) has clearly said that in absence of any statutory rules, administrative instructions or guidelines, an employee can claim interest on his retiral benefits which includes gratuity under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution.

The petitioner was required to approach this Court within a reasonable time from the date on which the petitioner was paid the principal amount on account of gratuity without interest for the delayed period. The reasonable period is reckoned to be 3 years as per the Limitation Act, 1963, the principles whereof are applicable to monetary claims made even in the writ petition. This position has been made clear in the judgment reported in **(2008) 8 SCC 648** (**Tarsem Singh**

vs. Union of India & Ors.), which has been subsequently followed in **(2016) 13 SCC 797** (**Asger Ibrahim Amin vs. Life Insurance Corporation of India**) and lastly approved in the judgment reported in **2022 SCC Online SC 641** (**Rushibhai Jagdishbhai vs. Bhavnagar Municipal Corporation**). The petitioner, therefor, was required to approach the Court within 31st March, 2021. However, prior to expiry of the 3 years period, the pandemic intervened and as such, the Hon'ble Supreme Court by its orders passed from time to time exempted the application of limitation between the period 15th March, 2020 and 28t February, 2022. The 3 years period in the instant case, therefor, elapsed in between the period when the exemption was in operation. The Hon'ble Supreme Court has specified that in case of matters where the cause of action accrues within the exempted period, proceedings shall be filed within 90 days from 1st March, 2022.

In the instant case, the petitioner has approached this Court on 22nd March, 2023, that is much after the 90 days period, but keeping in mind that this is a case for delayed payment of gratuity for which interest is payable under the provisions of Section 8 of the Payment of Gratuity Act, 1972 and the rules framed thereunder and it was the bounden duty of the State agency to pay the same in time, I am inclined to allow this application. The statutory rate of interest at the present is 10%.

Keeping in mind the facts of the case and legal position, as it stands, the Chief Executive Officer, HIMUL & Additional District Magistrate, Darjeeling is directed to pay interest to the petitioner on the principal sum on gratuity from the date of retirement till its actual payment @ 6% per annum.

The rate of interest allowed is in view of the ratio laid down in the judgment reported in **(2021) 11 SCC 543** (**State of Andhra Pradesh & Anr. Vs. Dinavahi Lakshmi Kameswari**). The payment of interest has to be made within a period of four months from date.

The concerned officers/department shall start the process of disbursing the interest immediately on receiving a server copy of this order without waiting for the certified copy. At the time of payment of the interest amount, the petitioner shall produce the certified copy of the order.

It is also made clear in default of making payment of the amount within four months, the respondent authorities shall be bound to pay simple interest @ 10 per cent per annum on the gratuity amount paid belatedly from the date of retirement till the date of actual payment.

With the directions aforesaid, WPA 520 of 2023 is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Arindam Mukherjee, J.)