

OD-5

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1819/2023

SANTI KUMAR MALLICK
VS
THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

Date : 12th December, 2023.

Appearance :
Mr. Debdutta Basu, Adv.
... for the petitioner.

Mr. Bhaskar Prasad Vaisya, Adv.
Mr. Nilay Baran Mandal, Adv.
... for the State.

Mr. Niladri Bhattacharjee, Adv.
Ms. Deblina Chattaraj, Adv.
Ms. Priyanka Kundu, Adv.
Ms. Angana Dutta, Adv.
... for the respondent.

The Court: 1. Affidavit of service filed in Court today is taken on record.

2. The writ petitioner was a permanent employee of West Bengal Transport Corporation Limited (WBTCL), formerly known as The Calcutta Tramways Company (1978) Ltd..

3. The writ petitioner retired from service with effect from May 31, 2016. The retiral dues to the tune of Rs.22,26,723 /- were paid on October 4, 2016. The petitioner prays for interest on the delayed payment of the retiral dues.

4. Mr. Basu, learned counsel appearing on behalf of the petitioner

submits that the petitioner has also prayed for interest on the delayed payment of the differential amount of gratuity. The issue whether the differential amount of gratuity will be paid from September 25, 2019 as per the notification for (Revision of Pay and Allowance) Rules, 2019 or from the date when the Corporation sought to implement the ROPA benefits to its employees is pending adjudication before the Hon'ble Division Bench. Therefore, the claim on account of interest on delayed payment of the differential amount of gratuity may be considered at a later date.

5. 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.

6. The petitioner is entitled to claim such interest. Due to the assurance made by the employer/State, the claim of the petitioner has attained a statutory colour. 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.

7. Accordingly, this Court directs interest at the rate of 6% per annum to be paid to the petitioner from June 1, 2016 (being the date subsequent to the date of retirement) till October 04, 2016 (the date on which the actual payments were made).

8. Such payment of interest on the delayed payment of retiral dues shall be paid within three months from date. In the event of default, the rate shall stand increased to 8% per annum.

9. Insofar as the interest of delayed payment of differential gratuity, the issue is pending before a Division Bench of this Court in APOT/243/2022 along with cross objection being OCOT/1/2023.

10. The issue before the Hon'ble Division Bench is as to from which date the interest would be payable on account of delayed payment of differential gratuity.

11. The aforesaid issue of interest differential payment of gratuity and

the period of computation thereof shall abide by the result of the decision of the Division Bench referred to hereinabove.

12. In that view of the matter, nothing further remains to be adjudicated in the writ petition.

13. The WPO/1819/2023 stands disposed of.

(RAJASEKHAR MANTHA, J.)

pkd/mg