09. 24.04.2024
bd. Ct.23

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 239 of 2024
IA No. CAN 1 of 2024

Surajit Sen
-vs-
The State of West Bengal & Ors.

Mr. Jayanta Kumar Datta
Mr. Saikat Saha Banik ... for the petitioner.

Mr. Rananeesh Guha Thakurta
Mr. Piyush Jain
Ms. Senjuti Sengupta
Ms. Dipa Roy ... for the respondent nos. 8 to 10

Mr. Arjun Ray Mukherjee
Mr. Subhendu Sengupta ... for the State.

In this writ petition the writ petitioner has sought for enforcement of an order passed by the Controlling Authority under the Payment of Gratuity Act, 1972 of 19th August, 2020 directing the respondent no.8 (Employer) to pay a principal sum of Rs. 1,47,115/- along with simple interest @ 10% p.a. on the said principal sum of Rs. 1,47,115/- for the period from 10th August, 2017 till the date of actual payment in terms of Section 7(3)A of the 1972 Act, and the notification issued by the Central Government in respect thereof since the certificate case is not been proceeded. As the said sum remains unpaid a certificate was issued in terms of Section 8 of the 1972 Act, for executing the certificate issued in terms of the order of the Controlling Authority dated 19th August, 2020 but has remand pending for a considerable period of time . After issuing a show-cause notice dated 26th November, 2020 the respondent no. 8 was directed to pay the principal sum of Rs. 1,47,115/- with simple interest calculated thereon amounting to Rs. 45,694/-, the aggregate value which was Rs. 1,92,809/- with compound interest @ 15% from 20th September, 2020 i.e., from the date of expiry of the time mentioned in the order of the Controlling Authority uptil recovery thereof. The certificate case is still pending. The petitioner, therefore, has sought for a direction for expeditious execution of the certificate. The petitioner under the provision of West Bengal Shops and Establishment Act, 1963 (hereinafter referred to the "1963 Act") is also entitled to a sum of Rs. 42,174/- along with compensation of Rs. 84,348/- and Rs. 850/- on account of fee charges in terms of an order passed by the Referee under the 1963 Act on 19th August, 2020.

Considering that the employee has remained without his retiral benefits this Court directed the respondent no. 8 to pay such money as the order of the Controlling Authority dated 19th August, 2020 as also the order of the Referee under the 1963 Act, also dated 19th August, 2020 had attained finality as no appeal has been preferred against either of the said orders. Initially by an order dated 5th March, 2024 the respondent nos. 8,9 and 10 were directed to apprise this Court as to when the amount so computed by the Controlling Authority as also the Referee respectively under the 1972 and 1963 Act will be paid. By a further order dated 14th March, 2024 the respondent nos. 8,9 and 10 were directed to pay the amounts assessed by the

Controlling Authority under the 1972 Act and the Referee under the 1963 Act. The respondent nos. 8,9 and 10 made an application for modification of the order dated 14th March, 2024 to allow the payments to be made in suitable instalments being CAN 1 of 2024. By an order dated 15th April, 2024 the respondent nos. 8,9 and 10 were directed to bring a computation of the amount payable on account of gratuity by adding the simple interest and the compound interest to the principal sum as provided under the statute at the show cause notice.

Learned advocate for the respondent nos. 8,9 and 10 has placed before this Court a computation, a copy whereof had been given to the learned advocate for the writ petitioner on 22nd April, 2024. The computation along with a letter dated 22nd April, 2024 showing service of the computation upon the learned advocate for the writ petitioner are taken on record.

On a perusal of such computation it appears that a sum of Rs. 2,74,467/- has become payable by the respondent nos. 8(Employer) to the petitioner on account of gratuity by adding simple interest and compound interest to the principal sum of Rs. 1,47,115/-. The learned advocate for the petitioner agrees to the calculation of interest as reflected in the chart.

With regard to the money directed to be paid by the Referee under the 1963 Act, it is submitted by the learned advocate for the petitioner that his client is not liable to pay for any further interest beyond the amount already assessed by the said Referee(respondent no. 2) in his order dated 19th August, 2020. It is further contended that by allowing compensation in terms of the provision of the statute a sum twice the principal sum has been directed to be paid to the petitioner and as such there is also no scope for claiming or paying further interest over the sum assessed by the respondent no. 2. Moreover, the 1963 Act does not provide for payment of interest unlike the 1972 Act. That apart, and in any event the petitioner has been suitably compensated for the period of delay and will suffer no prejudice if no further interest is allowed.

The fact remains that the respondent no. 2 in its order dated 19th August, 2020 had directed payment of the principal sum of Rs. 42,174/- along with compensation of Rs. 84,348/- and fee charges of Rs. 850/- aggregating to Rs. 1,27,372/- within a period of one month from the receipt of the order with an intimation thereof to the said respondents. The respondent no. 8 did not make payment of such sum within the time permitted for the same. While passing the order dated 14th March, 2024 I had reserved the issue as to further compensation for the delay in making payment of the amount directed to be paid by the respondent no. 2. With regard to further interest beyond 19th August, 2020 for the amount directed to be paid by the respondent no. 2. It is an admitted position that by not paying the said sum of Rs. 1,27,372/- within a month from 19th August, 2020 the respondent no. 8 has derived benefit out such money from the date of the order while the writ petitioner having not received the sum was deprived from the benefit out of such money. Even if the statute provides for compensation for the delay which has been awarded by the Referee as in the instant case, the same does not take care of the delay for the period post order when the respondent no. 8 was liable to pay the money but did not pay the writ petitioner for delay in paying his retiral benefit till up to the date of adjudication is covered by the compensation available. The delay for the period post 19th August, 2020 is attributable to the respondent no. 8 who did neither challenge the order nor made the payment as directed. The respondent no. 8 would have been out of pocket by the said sum of Rs. 1,27,372/- had it paid such sum within the time frame provided in the order. The argument of the learned advocate representing the respondent nos. 8,9 and 10 is also not acceptable because the delay beyond 19th August, 2020 has not been taken care of by granting compensation. This compensation can be at the highest be equated against interest up to the date of filing of the claim and the interest pendente lite i.e., for the period between the filing of the suit and passing of the order. The interest on judgment i.e, post disposed of the proceeding by the order dated 19th August, 2020 has neither been considered nor have been directed to be paid. With the default committed by the respondent no. 8, in paying the amount as directed by the respondent no. 2 the interest post the order surfaces now and is allowed.

The respondent no. 8,9 and 10 is directed to pay an interest of Rs. 23,000/- on the said sum of Rs. 1,27,372/- for the period between 20th August, 2020 and till date @ 6% simple interest by rounding off the figures being the aggregate of Rs. 2,74,467/- (towards Gratuity) and Rs. 1,27,372/-(towards payment as directed by respondent no.2) is Rs. 4,01,839/-. This figure is also rounded up as Rs. 4,00,000/-. The modification application being CAN 1 of 2024 filed by the respondent nos. 8,9, and 10 is allowed by directing the said respondents to make payment of Rs. 4,23,000/- by four installments starting from 10th May, 2024 and continuing for next three months i.e., up to 10th August, 2024. The first three installments shall be of Rs. 1,00,000/- each while the last installment shall be of Rs. 1,23,000/-. In failure to pay any of the installments as directed the entire sum then due and payable out of the sum of Rs. 4,23,000/- shall become at once payable and can be executed in terms of the provisions of the Rules under Article 226 of the Constitution of India of this Court.

The writ petition is allowed to the extent as aforesaid.

The modification application is also allowed by permitting the respondent nos. 8,9 and 10 to make payment as directed.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Arindam Mukherjee, J.)