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02.05.2024
Ct. No. 11
rrc

WP.CT. 71 of 2023

(Probal Kumar Roy Vs. The Union of
India & Ors.)

Mr. Surajit Samanta
Mr. Sushanta Kumar Ganguly
Mr. Biswajit Samanta
Ms. Tithi Pal
Ms. Sohini Samanta

..... For the petitioner

Mr. Pulakesh Bajpayee

..... For the respondents

The original application being OA No. 350/01178/2022 was preferred by the petitioner *inter alia* praying for a direction upon the respondents to return the withheld part of DCRG amount (Rs.6,84,000/-) together with an interest at the rate of 12% per annum for the period between the petitioner's date of retirement and the date on which the interest amount will be credited to his pension account. The learned Tribunal directed the respondents to disburse the withheld amount of gratuity, but without interest. Aggrieved by such denial of interest, the petitioner has approached this Court.

The petitioner's case is that he was an employee under the Railways and he retired on 31st January, 2017. Surprisingly, he was disbursed his gratuity withholding an amount of Rs.6,84,000/-. By a letter dated 20th February, 2020, he was intimated that the said amount had been withheld due to an order passed by the Learned Additional Senior Civil Judge, Anakapalle in

O.S. 205 of 2016. Stating that the gratuity amount could not have been withheld in view of the provisions of Section 60 (g) of the code of Civil Procedure (in short, CPC), the petitioner submitted representations claiming disbursement of the gratuity amount with interest. As the same were not considered, the petitioner approached the learned Tribunal. By the order dated 17th August, 2022, the original application was disposed of. The operative part of the said order runs as follows:-

‘Therefore, in the interest of justice, this OA is disposed of with a direction upon the competent authority to consider the pending representation, to release the withheld retiral dues of the applicant keeping in mind that the retiral benefits of an employee are not attachable and there is no decree upon the Railways to withhold the payable retiral dues of the applicant.

Order be issued within a period of 3 months from the date of receipt of a copy of this order.’

Pursuant to the said order, the respondents disbursed the said amount of Rs.6,84,000/- on 3rd March, 2023, but without interest.

Mr. Samanta, learned advocate appearing for the petitioner submits that gratuity amount cannot be attached as would be explicit from the provisions of Section 60(g) of the CPC. Furthermore, in terms of the Railway Services (Pension) Rules, 1993, where payment of gratuity is delayed and such delay is attributable to administrative reasons or lapses on the part of the employer, interest is to be paid at the rate applicable to State Railway Provident Fund amount, in accordance with the instructions issued from time to time.

According to him, on the basis of the order dated 13th December, 2016 passed by the learned Additional Senior Civil Judge at Anakapalle, the respondents could not have withheld the amount since the direction was '*subject to Section 60 CPC*'. The Railways and its functionaries were also not parties in the said proceeding.

He contends that even after arriving at a finding that retiral benefits are not attachable and that there was no decree upon the Railways to withhold the payable retiral dues, the learned Tribunal erred in law in not directing the respondents to pay interest upon the withheld gratuity amount.

Per contra, Mr. Bajpayee, learned advocate appearing for the respondents submits that the present petition is not maintainable. The same had been filed before this Court after the respondents had disbursed the withheld amount in compliance of the order passed by the learned Tribunal.

He argues that there was no deliberate intent on the part of the respondents to withhold the part of gratuity. They had proceeded on the basis of the order passed by the learned Civil Judge and such act cannot be construed to be a lapse on the part of the respondents.

In reply, Mr. Samanta submits that the fact of issuance of the order passed by the learned Civil Court was pleaded in the original application itself and upon consideration of the averments, the original application

was finally disposed of without any direction towards payment of interest and as such, preference of a fresh original application on the issues involved in the earlier application may invite invocation of the principles of *res judicata*.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

It appears that the respondents did not disburse withheld gratuity amount along with interest in view of the order dated 13th December, 2016 passed by the learned Civil Judge. A perusal of the said order clearly reveals that the said order was '*subject to Section 60 CPC*'. Thus, upon misreading and misinterpreting the order of the learned Civil Judge the gratuity amount was withheld.

Interest is not a penalty or punishment at all, but it is the normal accretion on capital. Hence, equity demands that an admitted amount which has been withheld, needs to be repaid along with interest thereon.

Gratuity is claimable as a matter of right and such right is in the nature of a property in the hands of a retired employee and not a mere bounty. As a model employer the State must conduct itself with high probity and candour and ensure that its employees do not succumb to the procedural rigmarole particularly when the claim pertains to payment of gratuity. For the lapses

on the part of the authorities, the petitioner cannot be made to suffer.

In the said conspectus, in our opinion, the learned Tribunal ought to have directed payment of interest.

Accordingly, the order dated 17th August, 2022 passed by the learned Tribunal is modified and the writ petition is disposed of directing the respondents to pay interest at the rate of 8% per annum over the withhold amount i.e., Rs.6,84,000/- for the period on and from 1st April, 2017 to 3rd March, 2023.

The above interest amount shall be calculated by the respondents and disbursed in favour of the petitioner within a period of 8 (eight) weeks from the date of communication of this order.

There shall, however, be no order as to costs.

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

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)