

W.P.A. 14026 of 2019

**Tapan Prasanna Chakraborty
Vs.**

**The Birbhum District Central Cooperative Bank
Ltd. & Ors.**

**Mr. Kishore Mukherjee
Mr. Sankha Subhra Roy
Mr. Ahitagni Dey**

...for the petitioner

**Mr. Pradip Kumar Roy
Mr. Partha Sarathi Pal
Mr. Joydeep Roy**

...for the respondent no.5

**Mr. Saikat Chatterjee
Mr. Puranjan Pal**

...for the respondent nos. 1 and 4

Petitioner was Branch Manager of Birbhum District Central Cooperative Bank Limited who retired on superannuation on 30th September, 2015. However, pensionary benefits including gratuity, leave encashment as well as arrear salary for the period from May, 2014 to 31st March, 2015 was paid to the petitioner in the year 2019.

Petitioner claims interest on delayed payment of gratuity, leave encashment and arrear salary for the aforementioned period.

In support of contention raised on behalf of the petitioner reliance has been placed on the order of the Hon'ble Division Bench dated 13th April, 2022 passed on intra Court appeal being MAT 1697 of 2019 (Birbhum District Central Co-operative Bank Ltd. vs. Paresh Kumar Mukherjee & Anr.)

It is submitted that on identical issue the Hon'ble Division Bench affirmed the order of the learned single Judge whereby the bank authority was directed to pay interest @ 9% per annum from the date of retirement till the date of actual payment within a specified time. However, on perusal of the order of the Hon'ble Division Bench wherein order of the learned Single Judge was quoted it appears that additional 2% interest was awarded on gratuity and leave encashment benefits in the event bank authority fails to pay the interest within four weeks.

Mr. Saikat Chatterjee, learned advocate represents the bank authority and submits that the said bank authority should not be saddled with direction to pay interest in view of stoppage of business of the bank for the period from 15th May, 2014 to 30th September, 2015 under the direction of Reserve Bank of India. It is also submitted that due to closure of the bank for the aforesaid period the bank authority suffered financial crisis which resulted in releasing of benefits to its employees and officers belatedly.

Another limb of submission which has been advanced on behalf of bank authority is the declaration dated 3rd May, 1993 submitted by the petitioner at the time of his appointment in the bank as Assistant. Much emphasis has been laid on a particular part of the said declaration wherein it was declared by the petitioner that he shall not claim any arrear pay and allowances if he is

permitted to join the post of Assistant with initial pay. Based on such declaration it has been submitted on behalf of the bank authority that petitioner is not entitled to claim interest on arrear salary for the period from May, 2014 to 31st March, 2015.

In addition thereto it has been submitted that Special Leave Petition was preferred before the Hon'ble Supreme Court against the order dated 13th April, 2022 by the bank authority. However, the said Special Leave Petition was dismissed for default by the Hon'ble Supreme Court and subsequently on filing application the same has been restored and is pending before the Hon'ble Supreme Court.

Having considered the submission made by the learned advocates representing the petitioner and the bank authority it appears that the order of the Hon'ble Division Bench dated 13th April, 2022 passed in MAT 1697 of 2019 applies in the present case and bank authority has released the interest in favour of the writ petitioner viz. Paresh Kumar Mukherjee.

The issue relating to stoppage of business of the bank for the period from 15th May, 2014 to 30th September, 2015 was taken into consideration by the Hon'ble Division Bench and it has been held that due to closure of the bank the writ petitioner should not be faulted.

In the present case one additional point has been taken based on undertaking submitted by the petitioner

dated 3rd May, 1993 which is at page 32 of the affidavit-in-opposition used by the bank. However, on perusal of the said undertaking it does not appear that the same affects the right of the petitioner to receive interest as claimed due to delayed payment of benefits to the petitioner in view of the fact that relevant part of the said undertaking is confined to arrear pay prior to formal appointment of the petitioner in the bank as Assistant.

In view of aforesaid discussion the concerned authority of Birbhum District Central Cooperative Bank Limited is directed to pay interest @ 9% per annum to the petitioner on delayed payment of gratuity and leave encashment benefits from the date following the date of retirement of the petitioner till the date of actual payment of the same within a period of 6 (six) weeks from the date of communication of this order.

The concerned authority of bank is further directed to pay interest @ 9% per annum on the arrear salary of the petitioner for the period from May, 2014 to 31st March, 2015 from the date following the date of retirement till the date of payment of the said arrear salary within a period of 6 (six) weeks from the date of communication of this order.

However, this order is subject to the order to be passed on the pending Special Leave Petition filed against order dated 13th April, 2022 passed in the appeal being MAT 1697 of 2019 and the bank authority shall be at liberty to recover the amount which is to be paid in

terms of the order passed by this Court today in terms of the order of the Hon'ble Supreme Court, if passed, permitting the bank authority to take steps accordingly.

With the aforesaid directions and observations, the writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)