

18. 04. 2024

BP
Sl. 14
Court No. 23

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 16620 of 2022

Prabir Kumar Ray
Vs.
The State of West Bengal & Ors.

Mr. Arka Kumar Nag
Ms. Deboleena Ghosh
..for the petitioner

Mr. Chandi Charan De, Ld. Add. G.P.
Ms. Chandana Ghosh
..for the State

Mr. S.M. Obaidullah
Ms. R. Ballav
..for the respondent nos. 9 & 10

It is submitted on behalf of the respondent nos. 9 and 10 that the petitioner resigned from the services on 11th January, 1997 and was duly issued the release order on 5th March, 1997. Accepting the petitioner's resignation with effect from 6th March, 1997 the petitioner did not take any steps for realization of his gratuity amount and after a lapse of about twenty six years filed this writ petition.

On a perusal of the annexures to the writ petition it appears that the petitioner was appointed on 15th May, 1989 and resigned from services of the respondent with effect from 6th March, 1997. The petitioner therefor had worked for about eight years. There is no dispute raised from the side of the employer (respondent nos. 9 and 10) that the petitioner did not work between 15th May, 1989 and 6th March, 1997. The petitioner having worked for more than five years is therefor entitled to gratuity under the provisions of Payment of Gratuity Act, 1997. The question of limitation raised by the respondent nos. 9 and 10 has to be looked into in the light of the release order dated 5th March, 1997 which is Annexure P-9 at page 51 of the writ petition. It appears from the said release order dated 5th March, 1997 that the Managing Director of Kangsabati Cooperative Spinning Mills Limited being the respondent no.10 had clearly indicated in the said release order that the accounts department is being advised to assess the petitioner's dues and claims against adjustment of advance or any dues lying in the name of the petitioner. This statement in the release order, according to me, amounts to a promise to pay. It is therefor the obligation of the employer to inform the petitioner about his dues and pay such retiral benefits to the employee. No instruction to the petitioner about his

retiral benefit which includes gratuity is placed before the Court.

The respondent nos. 9 and 10 have referred to following two judgements :

- 1) (2009) 2 SCC 479 (S.S. Balu & Anr. Vs. State of Kerala & Ors.)
- 2) 2014 (4) SCC 108 (Chennai Metropolitan Water Supply and Sewerage Board & Ors. Vs. T.T. Muralibabu)

to contend that the writ petition is not maintainable on having been filed on 22nd July, 2022 after about 22 years from the petitioner's resignation being accepted as far back as on 6th March, 1997.

The two judgements cited by the respondent nos. 9 and 10 have no manner of application to the facts of the case although there is no dispute as to the ratio laid down in the said two judgements. In the said two judgements it has been held that if the petitioner approaches the Court to assert his right after an inordinate delay, the same should not be entertained on the ground of delay and laches.

Retiral benefits has been looked into by the Hon'ble Supreme Court from a different angle while considering the delay in claiming the same. In the judgement reported in (2008) 8 SCC 648 (Union of India

Vs. Tarsem Singh) which has been followed in the judgement reported in 2016 (13) SCC 797 (Asghar Ibrahim Amin Vs. Life Insurance Corporation of India) and lastly followed in the judgement delivered by the Hon'ble Supreme Court on 18th May, 2022 in Civil Appeal No. 4134 of 2022 (Rushi Bhai Jagdeesh Chandra Pathak Vs. Bhavnagar Municipal Corporation) and reported in 2022 SC OnLine SC 641 that service related claim if made at a belated stage is to be refused on the ground of delay. The only exception to the said rule is cases relating to a continuing wrong.

In the instant case the respondent no.9 is a Cooperative Society formed to run a Spinning Mill under the control of the department of Micro, Small & Medium Enterprises and Textiles, Government of West Bengal. After having promised to release all claims of the petitioner in the release order the said respondents cannot now contend that the service related claims of the petitioner is barred by limitation when the employer did not make payment. The promise to pay and its failure amounts to a continuing wrong as held in the aforesaid three judgements. The petitioner therefor is entitled to claim the service related benefits despite there has been a long passage of time in between.

The next defense of the respondent nos. 9 and

10 is that the amount of gratuity payable to the petitioner has already been paid. To support this contention the learned advocate for the respondent nos. 9 and 10 hands over a photocopy of the 10th Report of Accounts of the respondent no.9 and submits that a sum of Rs. 43,366.85 has been paid on account of gratuity as recorded therein. To corroborate such figure the respondent nos. 9 and 10 relies upon a note sheet signed by one Biswajit Laha, Accounts Officer of respondent no.9. By referring to the cheque numbers and the cheque value in respect of three employees which includes the petitioner. The respondent nos. 9 and 10 say that the payment was duly made and as such was reflected in the annual report and the audited accounts of the respondent no.9.

The issue of payment is a question of fact which is required to be gone into by the Controlling Authority under the Payment of Gratuity Act, 1972.

The petitioner therefor is directed to lodge his claim on account of gratuity before the Controlling Authority in proper format within ten days from date along with a copy of this order. The Controlling authority shall look into the aspect of payment of gratuity amount as contended by the respondent no.9. The Controlling authority shall also assess the gratuity amount and give

its independent finding on facts after giving the petitioner and the respondent no.9 an opportunity of hearing as required under the 1972 Act.

The Controlling Authority, however, shall not go into the point of limitation or delay in filing the claim as I have found that the petitioner is entitled to claim his service related benefits in view of the promise made by the employer (respondent no.9) through the respondent no.10 in the release order dated 5th March, 1997.

Nothing further remains to be adjudicated in this writ petition. The same is accordingly disposed of.

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

(Arindam Mukherjee, J.)

