

14
26.6.2024
Ct. No. 11
SB

WP.CT 142 of 2023

Smt. Kalpita Mallik & Ors.

Vs.

The National Projects Construction Corporation
Ltd. & Ors.

Mr. Ujjal Roy

Mr. Arpa Chakraborty

... for the petitioners

Ms. Rakhi Shroff

... for the respondents.

Throwing a challenge to the order dated 19.6.2023 passed by the learned Tribunal below in Original Application being O.A. No. 1469 of 2019 (Kolkata), the present writ petition has been instituted. The operative portion of the order dated 19.6.2023 is as follows:

“7. In this view of the matter, what can be observed is that applicant shall be entitled to interest w.e.f. 28.11.2015 till the date of actual payment i.e. from 10.02.2017. The present O.A. is partly allowed for payment of interest on Rs. 7,12, 541/- shall be paid by the competent authority @8% per annum till the date of actual payment within 2 months.

The office order dated 01.02.2019, rejecting the representation of the applicant, vide speaking order is quashed and set aside to the aforesaid extent.

8. With the above directions, this O.A. stands disposed of. No costs.”

The facts leading to this writ petition are that one Abhijit Mallick, since deceased, after rendering service as an employee

of National Projects Construction Corporation (in short, the Corporation) superannuated on 30.4.2010.

The Corporation deducted a sum of Rs. 7,12,541/- for the cost of Material at Sight (MAS) and also a sum of Rs. 34,795/- against interest from his terminal benefits without resorting to any disciplinary proceeding.

Mr. Mallick, since deceased made an appeal before the Chairman & Managing Director of the Corporation for refund of those amounts but his appeal was left unattended. The petitioner approached the learned Tribunal with an Original Application being O.A. no. 66 of 2015, which was disposed of directing the respondents to dispose of the appeal within the time specified therein.

On February 8, 2017, the Chairman & Managing Director determined that the deduction was incorrect. Subsequently, on February 10, 2017, a cheque amounting to Rs. 7,12,541/- was issued to Mr. Mallick in accordance with this decision.

After receiving the amount, the petitioner applied to the concerned respondent for grant of interest accrued on the amount for the period during which it was withheld. Despite receipt of the application, no interest was granted. Aggrieved thereby, the petitioner filed an original application, O.A. no. 676 of 2017, which was disposed of by an order dated July 19, 2017 directing the concerned respondents to consider Mr. Mallick's request for payment of interest.

The Chairman & Managing Director negated Mr. Mallick's claim for interest by an order dated 01.02.2019 citing a reason that the petitioner was negligent in his duty. Obviously, the order dated 1.2.2019 was put to challenge before the learned

Tribunal in another original application being O.A. no. 1469 of 2019.

Ultimately, by the order impugned in the present writ petition, the learned Tribunal disposed of the original application vide. O.A. no. 1469 of 2019 declaring that the petitioner shall be entitled to receive interest from 28.11.2015.

The petitioner is aggrieved by selection of such cut-off date for accruing interest.

Mr. Roy learned advocate appearing on behalf of the petitioners submits that though the learned Tribunal specifically determined that the petitioner is entitled to receive interest on the deducted amount but arbitrarily fixed a cut-off date of 28.11.2015 for accruing interest. He contends that no reason has been assigned for selection of such cut-off date. He submits that a direction be given upon the concerned respondents to release interest from the date of retirement until the actual date of payment.

Ms. Shroff, learned advocate appearing on behalf of the respondents vehemently opposes such prayer. She seeks to defend the order of the learned Tribunal contending that the department by passing an order specifically concluded that the petitioner was negligent in his duty and accordingly, an amount was deducted. However, ultimately, the amount was released. She argues that the learned Tribunal has exercised its discretion in fixing the cut-off date, and as such, there is no scope before this Court to interfere with the order of the learned Tribunal.

Heard the learned advocates for the parties and perused the materials on record.

Record reveals that without initiating any disciplinary proceedings, the respondents deducted an amount of Rs.07,12,542/- from the gratuity amount of the employee citing his negligence on duty and such deduction was made after his retirement. However, ultimately, following the order of the Chairman & Managing Director, the amount was released but without granting any interest. By passing the order impugned in the writ petition, the learned Tribunal concluded that interest is payable from 28.11.2015. Indisputably, no reason has been assigned as to why the date being 28.11.2015 was chosen by the learned Tribunal below as the starting point of accrual of interest on the amount.

It is trite law that the Courts or Tribunals must exercise their discretion judiciously, guided by the settled principles of law and not according to their whims and caprice. The argument put forth by the learned advocate representing the respondents that the learned Tribunal's refusal to exercise its discretion in granting interest from the employee's date of retirement, precludes this Court to interfere with such decision, in exercise of its power of the judicial review is not acceptable to us.

It is condign to note that interest is not a penalty or punishment but a natural accretion on the principal amount. Therefore, those who withheld the amount are liable to pay interest to the rightful owner. Moreover, the Gratuity Act applicable to the employee does not authorize the respondents to withhold gratuity or any part thereof from any retired employee without initiating disciplinary proceedings or providing a valid reason. It is important to note that any delay

in payment of the deducted amount cannot be attributed to the employee.

In such conspectus, we are of the opinion that justice would be served if the respondents are directed to pay interest from the date of retirement of the employee until the date of its actual payment.

Accordingly, the order impugned in the present writ petition is modified to the extent that the respondents shall pay simple interest @ 8% per annum to the petitioners accrued on the amount of Rs. 07,12,542/- from 1.5.2010 to 10.02.1017. This payment shall be made by the respondents within a period of four weeks from the date of communication of this order.

With these observations and directions, the writ petition is, thus, disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

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