

29-01-2024
ct no. 13
Sl. 2
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WPA 19001 of 2021
Eastern Coalfields Limited & Anr.
-Versus-
Union of India & Ors.

**Mr. Manik Das,
Ms. Tanushree Dasgupta**
...for the petitioners

Mr. Biswajit Maity
...for the respondent nos. 1 to 3

1. The matter was listed for extension of interim order.
2. Having regard to the facts and the report of the respondents and the exception thereto by the petitioners, this Court has by consent of the parties, resolved to hear out the writ petition itself.
3. The issue that comes for consideration is as to whether a statutory right for interest under Section 8 of the Payment of Gratuity Act, 1972 can be waived.
4. The brief facts of the case are that the respondent superannuated from service on May 31, 2018. His gratuity was withheld by the employer/ECL on the ground that a CBI proceeding was pending against him. The respondent no.4

approached the controlling authority for release of his gratuity amount.

5. By an order dated November 27, 2019, the controlling authority recorded that the respondent no. 4 was entitled to gratuity and that the respondent no. 4 had waived his right of claiming any interest thereon.
6. The petitioner based on such order, paid gratuity amount.
7. Both the employer and the employee challenged the order of the controlling authority dated 27th November 2019, before the appellate authority. The appellate authority, initially ordered interest under Section 8 of the Act of 1972 to the employee on the delay in payment of gratuity.
8. The order was set aside on April 12, 2021 passed in WPA 8000 of 2021 (ECL and others Vs. Union of India and another) by a Co-ordinate bench of this Court. The matter was directed to be reheard by any other person holding the post of appellate authority at Asansol. The matter eventually came to be heard by an appellate authority, Central, Dhanbad under the Act of 1972.

9. Mr. Manik Das, learned counsel appearing for the petitioner would argue that the appellate authority who heard the matter did not have territorial jurisdiction to entertain the appeal. It is only another appellate authority located at Asansol that could have heard the matter in terms of the decision dated 12th April 2021 (supra) passed by the Co-ordinate Bench.
10. This Court has carefully considered the submissions of the learned counsel for the parties and has considered the order dated September 27, 2021.
11. It is now well-settled that consent cannot create jurisdiction and, only an authority having territorial jurisdiction over the subject matter of a proceeding that can pass orders. An order passed by an authority not having territorial jurisdiction on the subject matter would ordinarily become a nullity and cannot be enforced or executed. The instant case assumes a slightly different position.
12. It appears from the order dated April 12, 2021 (supra) passed by the Co-ordinate bench that the then appellate authority whose orders were challenged in the writ

petition did not inspire confidence in the Co-ordinate bench. Another appellate authority was directed to hear the matter based on the records lying before the controlling authority within six months.

13. The hearing by the appellate authority located at Dhanbad, would have dispelled any doubt of bias or prejudice against the authorities located at Asansol.
14. The appellate authority located at Dhanbad assumed jurisdiction under orders passed under Article 226 of the Constitution of India. A writ Court under Article 226 has the authority to direct another coordinately placed authority even outside the territorial jurisdiction to hear out any matter between two parties under the statute. The argument of the ECL on the ground of jurisdiction, therefore, cannot be sustained.
15. In so far as the merits of the order of the appellate authority dated September 27, 2021 are concerned, this Court is of the view that the finding recorded therein that a right under statute cannot be waived, is sound and based on settled propositions

of law. It is now well-settled that statutory and fundamental rights cannot be waived.

16. The respondent no. 4 only wanted to receive his lawful gratuity at an early date. It is essentially in this like that the foregoing of interest was conceded to. This however cannot constitute waiver of statutory rights.
17. The ECL on its part released the gratuity amount notwithstanding the pendency of the CBI case against the employee at the relevant point of time.
18. What is important is the release of the full gratuity amount in favour of the respondent no. 4 by the ECL. If any of the charges against the respondent no. 4 were serious enough to constitute any moral turpitude, the ECL, even with a concession of interest from the employee, should not and could not have paid any amount of much less, gratuity to the employee.
19. In that view of the matter, this Court is of the view that the ECL cannot take advantage of an innocent concession of interest by an employee on the delayed payment of gratuity. The right to such

interest is a statutory right granted under Section 8 of the Act of 1972.

20. For the reasons recorded hereinabove, this Court upholds the impugned order and directs interest on a sum of Rs. 20 lakhs gratuity paid to the respondent no. 4. The ECL shall pay a sum of Rs. 3,16,670/- to the respondent no. 4 as interest within a period of 3 weeks from date.
21. In default of payment as directed hereinabove, the interest on the delayed payment of gratuity shall be calculated @ 9% and paid to the respondent no. 4.
22. With the aforesaid directions, the instant writ petition shall stand disposed of.
23. There shall be no order as to costs.
24. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)