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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 18957 of 2024

Malabika Ghosh
-Vs-
The State of West Bengal & Ors.

Mr. Sayan Banerjee,
Ms. Suparna Dutta
.... for the petitioner

Mr. Swapan Banerjee,
Mr. Soumen Chatterjee
... for the State

Ms. Parna Roy Chowdhdury
... for the SFDCL/respondent no. 3

The report in the form of an affidavit filed on behalf of the State Fisheries Development Corporation Ltd. (in short, 'SFDCL') in Court today is taken on record.

On a perusal of the said report, it appears that the petitioner on his retirement on 31st March, 2022 had become entitled to a sum of Rs. 11,74,616/- on account of gratuity and a sum of Rs. 4,24,825/- on account of leave encashment aggregating to a sum of Rs. 15,99,441/-. The petitioner has been paid a sum of Rs. 5,91,000/- on account of part payment of gratuity amount. After deducting such sum of Rs. 5,91,000/- from Rs. 15,99,441/-, a sum of Rs. 10,08,441/- is still payable to the petitioner as per SFDCL.

On behalf of SFDCL, it is submitted that the payment could not be made due to lack of funds available to SFDCL It is now well settled that the retiral benefits of an employee is his/her right and not a bounty. The employer on the plea of lack of funds cannot abstain from paying the retiral benefits to the employee. The position of law is well settled that if a benefit is passed on to a set of employees, the same is liable to be also given to the similarly circumstanced employees. Since several of the employees have received their retiral benefits, there can be no good ground in case of petitioner for his unpaid retiral benefits to be paid as and when the funds are available to SFDCL. On behalf of the petitioner, it is submitted that similarly circumstanced persons have received the retiral benefits and as such, the petitioner cannot be deprived of the same on the plea of absence of disbursable funds in the hands of SFDCL.

On behalf of SFDCL, faced with such position, it is submitted that the said Corporation functions under the pervasive control of the State Fisheries Department and as such, if the funds are not made available to SFDCL for paying the retiral benefits to the retired employees, the payment cannot be made.

The petitioner also says that the computation of leave encashment, as made and provided by SFDCL in its report, is incorrect as on the basis of 300 days available for leave encashment multiplied with the daily amount computed on the basis of the last drawn salary of the petitioner, the amount shall be in excess of Rs. 4,24,825/-.

After hearing the parties and considering the materials on record, I direct the SFDCL to make the payment of the said sum of Rs. 10,08,441/- to the petitioner along with accrued interest thereon @ 6% per annum on and from 1st April, 2022 until the repayment is made. SFDCL shall also revisit the amount under leave encashment by calculating the same on the basis of the last drawn salary of the petitioner for the days allowed towards leave encashment and make payment of any additional amount, if the same is due to the petitioner, as directed to be paid with interest.

The State is represented. The State is directed to take necessary action to provide funds to SFDCL for paying the unpaid retiral benefits to the petitioner.

The entire exercise for paying the unpaid retiral benefits with accrued interest to the petitioner as also any additional sum on account of leave encashment should be completed by 31st March, 2025.

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

All parties including SFDCL and the State shall act on the basis of the server copy of this order duly downloaded from the official website of this Court without insisting upon production of a certified copy thereof.

(**Arindam Mukherjee, J**.)