

05.09.2024
Item No.19
Court No.11
Avijit Mitra

WP.CT 230 of 2024

In re: An application under Article 226 of the Constitution of India;

And

Purnima Roy Chowdhury

- versus-

Union of India & Ors.

Mr. Ujjal Ray,
Mr. Arpa Chakraborty
...for the petitioner

Mr. Shyamal Kumar Mukherjee,
Ms. Sarda Sha,
Mr. Krishnayan Ghosh,
Mr. Sukanta Das
...for the respondents

Affidavit-of-service filed by the petitioner be kept on record.

The present writ petition has been preferred challenging an order dated 4th May, 2023 passed by the learned Tribunal in the original application (in short, OA), being OA 1675 of 2022.

Mr. Ray, learned advocate appearing for the petitioner submits that though no disciplinary proceeding was pending against the petitioner on the date her superannuation on 31st January, 2022, the respondents illegally withheld her gratuity on the basis of a memo dated 28th January, 2022 issued on behalf of the respondent no.4, three days prior to her superannuation. Aggrieved thereby, the petitioner

submitted a representation on 23rd February, 2022 but the same was not responded to. Reminders were also issued thereafter but in vain. Aggrieved thereby, the petitioner preferred the OA primarily challenging the memo dated 28th January, 2022 with a specific prayer towards disbursement of the death-cum-retirement gratuity and leave salary with interest as admissible under the rules.

He argues that the learned Tribunal though directed the respondents to disburse the gratuity amount as mentioned in the Pension Payment Order dated 1st February, 2022 but did not issue any direction towards payment of interest though there was a specific prayer to that effect in the OA. In support of his arguments, Mr. Ray has placed reliance upon judgments delivered in two writ petitions being WP.CT 154 of 2023 and WP.CT 121 of 2024.

Ms. Sha, learned advocate appearing for the respondents, however, submits that a disciplinary proceeding was contemplated against the petitioner and as such appropriate follow up steps were taken to obtain sanction from the competent authority and such sanction was awaited at the time of the petitioner's retirement and as such the gratuity amount could not be disbursed.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Records reveal that the petitioner retired from his service on 31st January, 2022. Indisputably, no disciplinary proceeding was pending against her on the date of her superannuation and she was also not placed under suspension on the said date. The learned Tribunal arrived at a finding that it was incumbent upon the respondents to disburse the gratuity amount to the petitioner on the date of his superannuation and accordingly the respondents were directed to disburse the benefits. The respondents have not challenged the findings arrived at by the learned Tribunal. The gratuity amount was withheld by the respondents without any justifiable reason and in the absence of laches on the part of the petitioner.

Interest is not a penalty or punishment at all, but it is the normal accretion on capital. Gratuity is claimable as a matter of right and such right is in the nature of a property in the hands of a retired employee and not a mere bounty. For the lapses on the part of the authorities, the petitioner cannot be made to suffer.

In the said conspectus, the learned Tribunal ought to have directed payment of interest for the period during which petitioner's gratuity amount was withheld.

In view thereof, the order dated 4th May, 2023 passed by the learned Tribunal in OA 1675 of 2022 is modified and the writ petition is disposed of directing the respondents to pay interest at the rate of 8% per annum over the withheld gratuity amount of Rs. 16,53,548/-

with effect from 1st February, 2022 till the date of actual disbursement of gratuity.

The above interest amount shall be calculated by the respondents and disbursed in favour of the petitioner within a period of 6 (six) weeks from the date of communication of this order.

The present writ petition is, accordingly, disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

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