19.07.2024
DL-1
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

R.V.W. 191 of 2022
with
IA No. CAN 1 of 2022
In
WPA 10236 of 2022

The Chairman SSC, WBSEDCL & Ors.

Vs.
Md. Hasibur Rahaman & Anr.

Dr. Madhusudan Saha Roy,
Mr. Debanjan Mukherjee
....for the review applicants.
Mr. Rajarshi Basu,
Mr. S. T. Mina
....for the State.
Mr. Tilak Mitra,
Md. Safiur Rahaman
.....for the respondent.

This review application arises out of an order dated 5th August, 2022 passed in WPA 10236 of 2022. The review applicants are respectively the West Bengal State Electricity Distribution Company Limited (in short, WBSEDCL) and its officers who are respectively the respondent nos.2 to 6 in the writ petition.

The main ground on which the review application has been filed is that the employer/WBSEDCL is not liable to release the pension or issue any Pension Payment Order and is also not liable to pay any interest since the employer did not withhold any money.

A review application can be maintained in respect of an order passed in the writ jurisdiction on the

principles analogous to those elucidated in Order XLVII of the Code of Civil Procedure, 1908.

In the instant case, the order under review was passed in the presence of WBSEDCL. The review petition does not disclose about the discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the review applicant or could not be produced at the time when the order was passed. Review can be maintained if some mistake or error is apparent on the face of record. Review application can also be maintained "for any other sufficient reason".

On a perusal of the order under review, it is apparent that the petitioner is admitted an employee of WBSEDCL and was under the Contributory Provident Fund (CPF) scheme. As a member of CPF scheme, the petitioner is entitled to the provident fund amount which had accumulated over the years from out of the deductions made from the petitioner's salary and the contribution of the employer. It is also evident from the record that the petitioner is entitled to a pension under the pension scheme provided under the provision of Employees' Provident Fund &

Miscellaneous Provisions Act, 1952. The petitioner, therefor, is entitled to a pension as an employee

covered under the CPF scheme apart from the provident fund.

Admittedly, the petitioner did not receive the pension amount till April, 2023. Only in April, 2023 after passing of the order under review, the current pension @ Rs.1417/- per month was paid to the petitioner in April, 2023. The petitioner retired from services on attaining the age of superannuation with effect from 30th June, 2008. The petitioner, therefor, became entitled to the pension on and from July, 2008 which fell due in August, 2008. Admittedly, the pension for the month of July, 2008 till March, 2023 were not paid in time. The total arrears of pension is Rs.2,86,659/-. There is as such no mistake apparent on the face of record which entitles the review applicants to file and maintain the review application. The only limb open to maintain the review application is, therefor, "for any other sufficient reason".

In the order under review, interest @ 6% per annum was directed to be paid to the petitioner by his employer/WBSEDCL. This direction was given following the ratio laid down in the judgment of the Hon'ble Supreme Court reported in **(2022) 4 SCC 627**

(**Dr. A. Selvaraj vs. C.B.M. College and Others**) and that reported in **(2021) 11 SCC 543 (State of Andhra Pradesh and Another vs. Dinavahi Lakshmi Kameswari)** . This liability to pay interest was fasten on the employer because it was the responsibility of the employer to provide retiral benefits to the employees i.e., the petitioner.

Assuming without admitting that there was a delay on the part of the Employees' Provident Fund Organisation (EPFO), then also WBSEDCL is not absolved of its obligation to pay interest simply because the petitioner as an employee had no direct involvement with EPFO. The involvement was through the employer that is WBSEDCL. The employee was to settle the retiral benefits of the employee on his retirement and should have call upon the petitioner to provide any additional details apart from these which were already there in the petitioner's service records. If there was any mistake in the form filled up by the petitioner, it was the responsibility of the employee to inform him to correct the same. The employer has disclosed no details in this effect even in the review application. It will be a fruitless exercise to go into the issue as to who is responsible for the delay in paying the pension that is WBSEDCL/employer or EPFO at this stage as an enquiry into the matter for fact finding would cause further delay and hardship to the employee. That is why in **Dr. A. Selvaraj** (supra), the Hon'ble Supreme Court had directed the employer to

pay the interest on delayed payment of the retiral benefits at the first instance without going into the enquiry. The Hon'ble Supreme Court has, however, in the said judgment kept the issue of inter se dispute between the two agencies for which the retiral benefits remained unpaid in the said case to be decided in any appropriate proceedings inter se between the two agencies.

In the aforesaid facts and circumstances, I do not find any substance in the review application even on the ground of "for any other sufficient reason". The review application is, therefor, dismissed with costs assessed at Rs.10,000/-. Out of the said costs of Rs.10,000/-, Rs.5,000/- is to be paid to the petitioner on or before 31st July, 2024. The balance amount of Rs.5,000/- shall be paid to the High Court Legal Services Committee also within 31st July, 2024. The order imposing the costs will be an executable order.

Needless to mention that WBSEDCL shall comply with the order dated 5th August, 2022, being the order under review.

Since the review petition is disposed of, the connected application in the review petition also stands dismissed.

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

(**Arindam Mukherjee, J.**)