Form No. –J(2)
Item No. 9
Court No. 26
(PG)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 1952 of 2023
With
I.A. No. CAN 1 of 2023
The Eastern Coalfields Limited & Ors.
VS.
Sri Sunny Harijan & Anr.

For the Appellants : Mr. Syed Nurul Arefin
Ms. Rashmi Binayak
Mr. Syed Moyeenul Arefin

For the Respondent No.1/
Writ Petitioner : Mr. Nirmalendu Ganguly
Mr. A.N. Chakraborty

For the respondent No.
2 : Mr. Kallol Guha Thakurta
Mr. Wasim Rahaman
Mr. Shariz Afzal

Hearing on : 12.06.2024

Judgment on : 12.06.2024

DEBANGSU BASAK, J.:-

1. By consent of the parties, the appeal is taken up for final hearing.

2. Appeal is directed against an order dated July 31, 2023 passed in W.P.A. 2169 of 2023.

3. By the order impugned, the learned Single Judge rejected the prayer for compassionate appointment on the ground of delay in applying for the same. The learned Single Judge however, directed retiral benefits of the father of the writ petitioner/ respondent herein, to be disbursed to the writ petitioner along with interest calculated @ 6 % per annum from the date of the mercy petition made by the deceased father of the writ petitioner/respondent till the date of payment.

4. Learned advocate appearing for the appellants submits that, the deceased father of the writ petitioner/respondent was terminated from services by an order dated March 15, 2010. Such order of termination remained unassailed. The deceased father of the writ petitioner/respondent however, filed a mercy petition dated September 10, 2013 seeking reinstatement. The same was rejected. Document of communication of the order of rejection was misplaced. Therefore, a fresh order of rejection of the mercy petition was communicated to the writ petitioner on March 4, 2023.

5. Learned advocate appearing for the appellants submits that, subsequent to the observations made by the Court in course of hearing on June 11, 2024, the appellants credited the bank account of the writ petitioner/respondent herein with the sum of the gratuity receivable by the deceased employee. He draws the attention of the Court to the service records of the deceased employee and submits that, in such service records the name of the writ petitioner does not appear as an heir of the deceased employee. He submits in his usual fairness, that, the writ petitioner may be born subsequent to the service records being submitted by the deceased employee as to his heirship. He contends that, since the order of termination took effect on May 15, 2010 and since, the writ petitioner never approached the authorities for disbursement of the terminal benefits, the imposition of interest @ 6% per annum from the date of the mercy petition is harsh and burdensome upon the appellants.

6. He submits that the appellants are ready and willing to pay the terminal benefits of the deceased employee to the writ

petitioner, provided that the writ petitioner complies with the formalities for receipt of the provident fund.

7. Writ petitioner/respondent as well as the respondent no.2 are represented.

8. Learned advocate appearing for the writ petitioner/respondent submits that his client is entitled to interest on the terminal benefits as, the appellants enjoyed such money all these time. Therefore, according to him, the learned Judge was correct in imposing interest @ 6% per annum from the date of the mercy petition, that is, September 10, 2013 till the date of payment.

9. We perused the materials made available on record.

10. The deceased employee was given an employment under the appellants on December 6, 1990. His services was terminated with effect from March 15, 2010 subsequent to a disciplinary proceeding. Apparently, the deceased employee applied for reinstatement by way of a mercy petition dated September 10, 2013, which was rejected by the appellants at the relevant point of time. However, documentary evidence of such rejection are not on record. The subsequent order of rejection dated March 4, 2023

however, refers to the earlier order of rejection and its communication to the deceased employee.

11. The writ petitioner approached to the authorities for the first time with the prayer for compassionate appointment and payment of terminal benefits on December 6, 2022. Till December 6, 2022, service records of the deceased employee did not show the writ petitioner/respondent as the legal heir of the deceased employee. Therefore, there was no occasion for the appellants to disburse the terminal benefits of the deceased employee as the appellants were unaware of the heirs and legal representatives of the deceased employee till December 6, 2022.

12. Learned Single Judge rightly rejected the prayer for compassionate appointment. The deceased employee expired on February 12, 2021. Prior thereto, the services of the deceased employee stood terminated. The application for compassionate appointment was made on December 6, 2022. The deceased was no longer an employee of the appellants as on the date of his death and as such the question of grant of compassionate appointment in died in harness category does not arise.

13. On the aspect of the terminal benefits, the appellants were required to pay the deceased employee immediately on termination of the services i.e. on March 15, 2010 or at least within a reasonable period thereafter. Appellants did not do so. Such action of the appellants is sought to be justified on the ground that, the deceased employee never asked for the terminal benefits and in any event, the deceased employee did not formally apply for the provident fund disbursement.

14. From the point of view of the appellants, services of the deceased employee stood terminated on March 15, 2010. The appellants were obliged to pay the terminal benefits of the deceased employee immediately on termination of the services of his employment. Appellants did not do so.

15. Learned Judge proceeded to award interest @ 6% per annum from the date of the mercy petition being September 10, 2013 @ 6% per annum. We find no material irregularity in the award of such interest by the learned Single Judge.

16. In such circumstances, we direct that the appellants pay terminal benefits of the deceased employee to the writ

petitioner/respondent herein within a fortnight from date, if not already paid along with interest calculated @ 6% per annum from the date of the mercy petition being September 10, 2013 till the date of payment.

17. Writ petitioner/respondent will apply for disbursement of the provident fund dues of the deceased employee within seven days from date. The relevant authorities will process such application and pay the amount receivable by the writ petitioner/respondent preferably within four weeks from the date of such application. So far provident fund dues are concerned, they shall not attract 6% per annum interest but such interest as law provides in respect of provident fund dues.

18. M.A.T. 1952 of 2023 along with connected application is disposed of accordingly, without any order for costs.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

20. I agree.

(Md. Shabbar Rashidi, J.)