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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/31/2024
WITH WPO/1881/2006
IA NO: GA/2/2023

M/S. GARDEN REACH SHIPBUILDERS AND ENGINEERS LIMITED
VS
SAMAR BIJOY BHOWMICK AND ORS

BEFORE :-
THE HON'BLE JUSTICE SOUMEN SEN
-A N D-
THE HON'BLE JUSTICE UDAY KUMAR
DATED : 4th April, 2024.

Appearance :-
Mr. L. K. Gupta, Sr. Adv.
Mr. Ranjay De, Adv.
Mr. Basabjit Banerjee, Adv.
Mr. Adityajit Ahel Bose, Adv.
…for appellant.
Mr. Subir Sanyal, Sr. Adv.
Ms. Sumitra Das, Adv.
…for respondent no.1.

Soumen Sen, J.(Oral):- The appeal arose out of an order passed by the learned single Judge in a writ petition in which an ex-employee of the appellant has filed a writ petition praying, inter alia, for release of retiral benefits along with interest.

Indisputably, the writ petitioner retired from service on 31.1.2007. The appellant by a communication dated 8.2.2007 informed the writ petitioner that the retiral benefits would not be released in his favour since he has not vacated the official accommodation. However, the appellant released a sum of Rs.15,27,442.03 in favour of the writ petitioner on account of the provident fund dues vide cheque no.156373 dated 1.2.2007 in the interregnum by a judgment and order dated 31.8.2012 passed by the Special Judge, CBI Court, Alipore, South 24 Parganas in case no. SPL 15 of 2001 the petitioner was acquitted. We have been informed that the appeal is pending. However, the fact remains that the writ petitioner was not paid gratuity and arrears salary soon after his retirement or being acquitted by the Special Judge on 31.8.2012.

Mr. Subir Sanyal, learned senior counsel representing the writ petitioner has submitted that the alleged failure on the part of the writ petitioner to vacate the official quarter cannot be a ground to deny retiral benefits and in this regard he has relied upon the decision of the Hon'ble Supreme Court in *R. Kapur vs. Director of Inspection [Painting And Publication] Income Tax and Another;* reported in [1994] 6 SCC 589 and in *Thakur Kishan Singh [Dead] vs. Arvind Kumar, reported in [1994] 6 SCC 591.*

Mr. Gupta, learned senior counsel appearing on behalf of the appellant has submitted that the learned single Judge has failed to take into consideration that by reason of failure on the part of the appellant to surrender the quarter in time huge expenditure has to be incurred by the appellant towards the rent and the appellant was unavailable to provide accommodation to its officials. It is submitted that even on the basis of ratio decidendi of the decisions relied upon by Mr. Sanyal, the petitioner is not entitled to interest on the arrears salary.

We have carefully read the order passed by the learned single Judge. It appears that by the office order dated 20.12.2006 the respondent had categorically stated that since judicial/criminal proceeding against the petitioner was in progress the appellant had decided that the gratuity should be paid to the writ petitioner on conclusion of the proceeding subject to the decision of the appropriate court or authority. Subsequently, however, after the petitioner retired from service by an office order dated 8.2.2007 the petitioner was, inter alia, informed as follows :

"Since 'No Dues' certificate has not been issued by the Administrative Department due to your failure to vacate Company's accommodation, Finance Department cannot be advised to release your terminal benefit at this stage as per the Company's Rules except accumulated balance in Provident Fund for which you are requested to contact PF Section of the Company."

In terms of the aforesaid order the appellant had, however, disbursed the provident fund dues as payable to the writ petitioner on 1.2.2007. Since then, the proceeding initiated against the writ petitioner under the provisions of section 7 and section 13[2] of the Prevention and Corruption Act, 1988 was finally decided by a judgment and order passed by the Special Judge, CBI Court, Alipore on 31.8.2012 whereby the writ petitioner as an accused person was acquitted in view of section 248[1] of Criminal Procedure Code from the charges for the offences punishable under sections 7 and 13[2] read with section 13[1][d] of the Prevention and Corruption Act, 1988.

The learned single Judge noticing that the Conduct, Discipline and Appeal Rules do not allow the appellant to withhold such terminal benefits and allowed the writ petition relied upon paragraph 11 of the judgment in R. Kapur [supra] in which the Hon'ble Supreme Court was pleased to observe as follows:

"11. The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised occupation is pending, should in our considered opinion, have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation.

> Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1.6.1986 till the date of payment. Of course this shall be without prejudice to the rights of the respondent to recover damages under Fundamental Rule 48-A. Thus, the civil appeal is allowed. However, there shall be no order as to costs."

The issued raised by Mr. Gupta, learned senior counsel in this appeal is whether in the given facts and circumstances the writ petitioner would be entitled to interest on the arrears salary. We are of the view that Mr. Gupta, learned senior counsel is able to make out a case for payment of interest on the arrears salary from the date of superannuation having regard to the fact that we have not find any plausible explanation from the writ petition for not releasing the quarter after the writ petitioner had retired from service and received the provident fund dues.

In our view, the statutory dues like provident fund, gratuity and pension cannot be equated with arrears salary. The payment of interest is an equitable remedy and depends upon various factors. In the given facts and circumstances of the case, we are of the view that the writ petitioner may not be entitled to any interest till July, 2019 when, ultimately, on the basis of the order passed by a learned single Judge the quarter was surrendered and handed over to the landlord. The appellant, however, did not release the arrears salary after the flat was surrendered nor any proceeding was initiated for realization of any loss or damage suffered. At the same time, one cannot ignore the fact that the appellant retained the quarter for all these years. Under such circumstances, we modify the order passed by the learned single Judge only to the effect that the writ petitioner shall be entitled to interest on the arrears salary from August, 2019 till the date of actual payment along with gratuity and leave encashment @ 10% per annum. The payment of arrears salary and gratuity along with interest shall be paid within a period of eight weeks from the date of communication of this order after deducting a sum of Rs.2822/- as directed by the learned single Judge. All other observations and directions while disposing of the writ petition by the learned single Judge remain undisturbed.

Both the appeal and the application stand disposed of.

I agree

(SOUMEN SEN, J.)

(UDAY KUMAR, J.)

pkd.