Court No. 2
21.5.2025
(Item No. 6)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 6364 of 2025

Asim Kumar Kundal
VS
The Stater of West Bengal & Ors.

Ms. Susmita Dey (Basu)
.... For the petitioner
Mr. N. C. Bihani
Mr. Soumyojit Ghosh
.... For C.S.T.C.

Ms. Susmita Dey (Basu), learned counsel appears for the petitioner.

Mr. Soumyajit Ghosh, learned counsel led by Mr. N. C. Bihani, learned senior counsel appears for C.S.T.C.

None appears for the State.

Pursuant to the direction made by this Court on **April 7, 2025,** report in the form of affidavit has been filed today in Court on behalf of respondent no. 5, the same is taken on record. Copy has been served.

Ms. Susmita Dey (Basu), learned counsel, on instruction, submits that, the petitioner shall not use any exception thereto and shall proceed on the basis of the existing record.

The petitioner at all material time was an employee of **Calcutta State Transport Corporation (for short, CSTC)**. The petitioner was appointed in

1983 and has retired on **January 31, 2021.** For such a long period he had an unblemished career record.

After retirement the petitioner has received 40% of his Provident Fund dues on **May 7, 2021**. The balance 60% was released on **July 16, 2021**. The petitioner claims interest on the said delayed payment of Provident Fund.

The leave encashment benefit was released in part in favour of the petitioner on **May 10, 2021** for a sum of **Rs.50,000/-** and a sum of **Rs.73,000/-** has been deducted by the employer on the alleged plea of excess payment made to the petitioner already during his employment tenure. The petitioner claims refund of the said sum of **Rs.73,000/-** along with interest.

After retirement, the petitioner has been paid the entire amount on account of Gratuity on **April 28, 2021**. The petitioner claims interest on the same on account of delayed payment.

Learned counsel appearing for C.S.T.C. Mr. Soumyajit Ghosh, refers to **pages 10 and 11** from the report and submits that, admittedly the amount in excess was paid to the petitioner during the life of his employment and the petitioner is liable to refund the same. In support, learned counsel has further referred to an undertaking appearing at **annexure R-5** at **page 12** to the report. The undertaking shows that the petitioner shall return the amount paid in excess to him even if it is detected subsequently. Accordingly, the excess payment of **Rs.73,000/-** was deducted from the Leave Encashment benefit of the petitioner. The deduction is just and proper.

With regard to the claim of interest the learned counsel for C.S.T.C. submits no interest shall be payable to the petitioner.

After considering the rival contentions of the parties and upon perusal of the materials on record it appears to this Court that the facts stated above are admitted.

The undertaking mentioned in **page 12** to the report shows that, the petitioner has undertaken that in the event the petitioner receives any excess payment contrary to his pay fixation, as detected subsequently, the same shall be refunded. The account statements at **pages 10 and 11** disclosed by C.S.T.C. shows that though the said excess payments were detected by the employer, well prior in point of time of the retirement of the employee, the same was never informed to the employee/petitioner neither any demand was raised upon the petitioner claiming refund.

The superannuation benefits are the properties of the petitioner and payable to the petitioner immediately on his retirement. The petitioner admittedly has retired on **January 31, 2021**.

Therefore, all the superannuation benefits, in law, were supposed to be paid to the petitioner immediately upon his retirement, which has not been done in the facts of this case. No contrary material has been produced before this Court by the C.S.T.C.

In the matter of: State of Punjab and Others –vs- Rafiq Masih (White Washer) & Ors. reported at (2015) 4 SCC 334 the Hon'ble Supreme Court had observed as under:

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have a rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable

balance of the employer's right to recover."

In view of the foregoing reasons and discussions this Court is of the considered view and opinion that the deduction made by the C.S.T.C. for a sum of **Rs.73,000/-** from account of the Leave Encashment benefit is not tenable in law and also inequities and the same shall be refunded to the petitioner forthwith with interest. Further, the interest claimed by the petitioner is also justified and stands allowed.

Following directions are made upon C.S.T.C.:

*(a) The employer through its appropriate authority shall forthwith refund the said sum of **Rs.73,000/-** to the petitioner together with interest @ **6% per annum since February 1, 2021** until the payment is actually tendered to the petitioner;*

*(b) The employer shall also pay interest @ **6% per annum** on the delayed payment of Provident Fund since **February 1, 2021** till the actual date of payment of the amount to the petitioner; and*

*(c) The employer shall also pay interest @ **6% per annum** on the delayed payment of Gratuity since **February 1, 2021** until the date of payment of the amount to the petitioner.*

All the above payment shall positively be paid to the petitioner within a period of **eight weeks** from the date of communication of this order.

In default, the rate of interest shall be **8% per annum** to be paid by the employer, if the amount is not paid to the petitioner within the said period of **eight weeks** as directed above.

With the above observations and directions, this writ petition, **W.P.A. 6364 of 2025** stands **disposed of**, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)