

Court No. 2

02.5.2025

(Item No. 23)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 8996 of 2025

Dr. Abhishek Biswas

VS

Union of India & Ors.

Ms. Saheli Sen

Mr. Rajib Mullick

Ms. Ayantika Saha

.... For the petitioner

Mr. Siddhartha Bhattacharyya

Ms. Priyanka Ganguly

.... For Union of India

Affidavit-of-service, filed in Court today, is taken on record.

Ms. Saheli Sen, learned advocate with Ms. Ayantika Saha, learned advocate appears for the petitioner.

Mr. Siddhartha Bhattacharyya, learned advocate appears for respondents.

The petitioner submits that he has retired on **December 31, 2023**. The petitioner has been paying his pension. The petitioner has received its Provident Fund dues and gratuity. The petitioner now claims earned leave encashment on account of his employment benefit which has not yet been paid.

Mr. Siddhartha Bhattacharyya, learned advocate appearing for respondents submits that, the employer has detected various irregularities on the part of the said retired petitioner in course of his employment but till date no disciplinary proceeding

has been initiated. Hence, the earned leave encashment benefit has been withheld. He further submits that, the employer has already decided to initiate the necessary disciplinary proceeding.

Ms. Saheli Sen, learned advocate per contra, referring to **annexure P-2** at **page 15** to the writ petition, submits that, No Demand Certificate has already been issued on **November 9, 2023** in favour of the petitioner prior to his retirement.

After considering the rival contentions of the parties and upon perusal of the materials on record it appears to this Court that, save and except earned leave encashment benefits all other benefits have already been released in favour of the petitioner upon his superannuation on **December 31, 2023**. Today, in **May 2025** the employer has not yet initiated any disciplinary proceeding, as submitted by the learned counsel for the respondents, recorded above.

In view of the above, this Court is of the considered view that, at least up till now the employer was not at all serious to investigate upon the alleged charges against the petitioner. The petitioner still has an unblemished career record. The employer is not at all diligent assuming though not admitting that there is allegation of charges according to them.

The superannuation benefit of an employee is the property of the employer and his right accrues to

receive the same immediately on the next date of his retirement unless any fetter is created in the established procedure of law. In the facts of this case there is no such fetter created.

Accordingly, the respondent no. 4 and/or respondent no. 5 and/or any other appropriate authority of the respondent no. 3 is directed to forthwith disburse and pay the earned leave benefit earned by the petitioner arising out of his employment positively within a period of **four weeks** from the date of communication of this order.

However, this order shall not preclude the employer to proceed against the petitioner, if they are entitled to do so in law and if ultimately in such proceeding the result comes in favour of the employer then the employer, shall be at liberty to proceed for realization of the earned leave benefit to be paid to the petitioner as directed herein, in accordance with law.

It is made clear that, this order shall not create any right or equity in favour of the employer in any manner whatsoever for initiating any proceeding or for recovery against the petitioner.

It is made clear that, the earned leave benefit shall be paid to the petitioner positively within the time frame as directed above subject to compliance of all the necessary formalities required to be completed by the petitioner in accordance with law.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

On the above terms and conditions, this writ petition, **WPA 8996 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.)