IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 8888 of 2016

Hira Mohan Dey

-Vs-

The State of West Bengal & Ors.

For the Petitioner	: Mr. Susanta Pal
For the Respondent Nos.2 to 5/ CTC	: Mr. Niladri Bhattacharjee Ms. Deblina Chatterjee
Heard on	: 09.09.2024, 25.11.2024, 28.11.2024 17.06.2025
Judgment on	: 02.09.2025

Ananya Bandyopadhyay, J.:-

1. The writ petitioner, a permanent employee of the respondent no. 2 company who had risen to the post of Superintendent, retired on attaining the age of superannuation on 31st May, 2008. According to him, his service record was unblemished and he had retired to the full satisfaction of his superiors.

2. It was the petitioner's case that upon retirement he was paid his provident fund dues and gratuity, but the computation of such gratuity, as also his leave salary, was made only on the basis of his last drawn basic pay of Rs. 8,400/-, without reckoning the dearness allowance component. He asserted that such calculation was contrary to law, since the Government itself had issued orders in September, 2009

implementing the recommendations of the 5th Pay Commission, granting revised pay scales with retrospective effect from 1st January, 2006 to 31st March, 2008 notionally, and with cash benefit from 1st April, 2008. As the petitioner had retired in May, 2008, he was entitled to all retiral and terminal benefits on the basis of such revised rates, but his dues were wrongly settled on the basis of pre-revised pay.

3. The petitioner contended in terms of Order No.6068-WT/TR/O/7T-14/09 dated 30th November, 2010, his claims for difference of gratuity, arrear of revised leave salary, and arrear of pension stood crystallised, and he legitimately expected prompt disbursement thereof. However, the authorities remained recalcitrant and failed to take any effective steps despite his written representations dated 11th January, 2013 and 25th March, 2013 before the competent authorities.

4. The petitioner stated being left remediless, he was constrained to approach this Court by filing W.P. No.796 of 2014, which was disposed of by order dated 8th January, 2015, directing the respondent no. 2 to consider his representation, grant him a hearing, and pass a reasoned order in the light of the circular by 31st March, 2015. Pursuant thereto, while the respondents released the remaining gratuity and leave salary in terms of the revised pay, the same was done without awarding any interest, and the arrears of revised pension and arrear ROPA benefits were left unpaid.

5. It was further pleaded that the petitioner, having failed to elicit compliance, sought information under Section 6 of the Right to

Information Act, 2005 on 10th December, 2015 regarding his arrear retiral benefits. However, the respondents remained silent and did not respond.

6. The petitioner contended that his claims towards interest on delayed payment of gratuity and leave salary, arrears of pension at the revised rate, and arrear ROPA constitute his vested property rights within the meaning of Article 300A of the Constitution of India, and the non-payment thereof was arbitrary, illegal, and contrary to law. Withholding of such lawful dues without assigning reasons amounted to failure to discharge statutory obligations, which resulted in infringement of his right to livelihood under Article 21 of the Constitution of India.
7. The Learned Advocate representing the petitioner submitted the interest on delayed retiral dues, arrear pension and arrear capital ROPA constituted property rights within the meaning of Article 300A of the Constitution and the same could not be denied to be disbursed in favour of the petitioner.
8. Moreover, non-payment of the aforesaid interest was illegal, arbitrary and violative of Article 21 of the Constitution of India. The respondent-authorities deliberately failed to discharge their legal duties which had been *mala fide,* capricious and against public policy. Withholding of the retiral dues including interest on delayed gratuity and leave salary at revised rates had been abuse of power by the respondent authorities intending to harass the petitioner after his retirement.
9. The respondent-authorities exceeded its power to withhold pension and retiral benefits being the source of livelihood after the petitioner's retirement.

10. The Learned Advocate representing the respondent-authorities contradicted the submission of the Learned Advocate representing the petitioner on the ground that the petitioner was not entitled to any interest on gratuity, leave encashment etc. and his claim of retirement dues and other benefits had been disbursed in his favour.

11. Sections 7 and 8 of the Payment of Gratuity Act, 1972 stated as follows:-

> "***Section 7. Determination of the amount of gratuity***. –
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> *(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.*
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> *(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.*
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> *(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.*
>
> *(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:*
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> *Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]*
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> *(4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.*
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> ***8. Recovery of gratuity. –***
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> *If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the*

controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon [1][at such rate as the Central Government may, by notification, specify], from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

[Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.]"

12. The Hon'ble Supreme Court in ***D.D. Tewari (Dead) through legal representatives Vs. Uttar Haryana Bijli Vitran Nigam Limited & Ors.***[1], held the following:-

> *"**2.** The appellant was appointed to the post of Line Superintendent on 30-8-1968 with the Uttar Haryana Bijli Vitran Nigam Ltd. In the year 1990, he was promoted to the post of Junior Engineer I. During his service, the appellant remained in charge of number of transformers after getting them issued from the stores and deposited a number of damaged transformers in the stores. While depositing the damaged transformers in the stores, some shortage in transformers' oil and breakages of the parts of damaged transformers were erroneously debited to the account of the appellant and later on it was held that for the shortages and breakages there is no negligence on the part of the appellant. On attaining the age of superannuation, he retired from service on 31-10-2006.*
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> ***3.** The retiral benefits of the appellant were withheld by the respondents on the alleged ground that some amount was due to the employer. The disciplinary proceedings were not pending against the appellant on the date of his retirement. Therefore, the appellant approached the High Court seeking for issuance of a direction to the respondents regarding payment of pension and release of the gratuity*

[1] (2014) 8 SCC 894

amount which are retiral benefits with an interest at the rate of 18% on the delayed payments.

4. *The learned Single Judge has allowed the writ petition vide order dated 25-8-2010 [CWP No. 1048 of 2010, decided on 25-8-2010 (P&H)] , after setting aside the action of the respondents in withholding the amount of gratuity and directing the respondents to release the withheld amount of gratuity within three months without awarding interest as claimed by the appellant. The High Court has adverted to the judgments of this Court particularly, in State of Kerala v. M. Padmanabhan Nair [(1985) 1 SCC 429 : 1985 SCC (L&S) 278] , wherein this Court reiterated its earlier view holding that: (SCC pp. 429-30, para 1)*

> *"1. [the] pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment [to the employees]."*

5. *The said legal principle laid down by this Court still holds good insofar as awarding the interest on the delayed payments to the appellant is concerned. This aspect of the matter was adverted to in the judgment of the learned Single Judge without assigning any reason for not awarding the interest as claimed by the appellant. That is why that portion of the judgment of the learned Single Judge was aggrieved of by the appellant and he had filed LPA before the Division Bench of the High Court. The Division Bench of the High Court has passed a cryptic order which is impugned in this appeal. It has adverted to the fact that there is no order passed by the learned Single Judge with regard to the payment of interest and the appellant has not raised any plea which was rejected by him, therefore, the Division Bench did not find fault with the judgment of the learned Single Judge in the appeal and the letters patent appeal was dismissed. The* *correctness of the order is under challenge in this appeal before this Court urging various legal grounds.*

6. *It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31-10-2006 and the order of the learned Single Judge after adverting to the relevant facts and the legal position has given a direction to the respondent employer to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgment referred [(1985) 1 SCC 429 : 1985 SCC (L&S) 278] to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.*

7. *It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972. Having regard to the facts and circumstances of the case, we do not propose to do that in the case in hand.*

8. *For the reasons stated above, we award interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of entitlement till the date of the actual payment. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date the amount falls due to the deceased employee. With the above directions, this appeal is allowed."*

13. The Hon'ble Supreme Court in ***H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd.*[2]*,*** observed as follows:-

*"**6.** In order to appreciate the above contentions urged, it is necessary to notice the provisions of the Payment of Gratuity Act, 1972 (for short "the Act") to the extent they are relevant. They are extracted below:*

"7. Determination of the amount of gratuity.—(1) A person who is eligible for payment of gratuity under this Act or any person authorized, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

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(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

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8. Recovery of gratuity.—If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application

[2] (2003) 3 SCC 40

made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act."

7. *It is evident from Section 7(2) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity. Under Section 7(3), the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Under sub-section (3-A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in sub-section (3), he shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits; provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be.*

...

10. ... The respondent is directed to pay interest @ 10% on the amount of gratuity to which the appellant is entitled from the date it *became payable till the date of payment of the gratuity amount. The appeal is allowed accordingly with cost quantified at Rs 10,000."*

14. The petitioner a Superintendent and permanent employee retired on 31st May 2008 with the retirement dues seemingly settled having received provident fund and gratuity. However, the gratuity and leave salary were calculated on his last pay scale, i.e. Rs.8,400/-, without considering the Dearness Allowance. In September, 2009, the 5th Pay Commission was implemented and became effective retrospectively granting notional benefit from 01.01.2006 to 31.03.2008 and cash benefit from 01.04.2008 onwards. The petitioner contended to have retired in the month of May, 2008 entitling him to revised retiral benefits with regard to gratuity, leave salary and pension.
15. The respondent-authorities did not consider his representations forwarded in the year 2013 which compelled him to file a writ petition being No.796 of 2014 before this Hon'ble Court which directed consideration of his case vide Order dated 08.01.2005. In compliance thereof, the respondent-authorities released the balance amount of gratuity and leave salary at a revised rate but did not grant any interest for such delayed payment as well as the arrear revised pension and the benefit towards arrear of ROPA were not released.
16. The respondent-authorities ignored his application under the Right to Information Act dated 10.12.2015 seeking clarifications.
17. In view of the aforesaid observation of the Hon'ble Supreme Court, the petitioner is entitled to interest for delayed payment of gratuity and leave salary at the revised rate as also to consider the pension to be disbursed

at a revised rate. The petitioner is further entitled to interest on delayed payment of pension at the revised rate as well as arrear of ROPA.

18. The respondent-authorities are to compute the interest at the rate of 6% per annum for delayed payment of gratuity and leave salary at the revised rate arrear revised pension as enhanced as per 5^{th} Pay Commission including interest and the arrear amount towards ROPA within eight (8) weeks from the date of passing of this order.
19. In view of the above discussions, the instant writ petition being WPA 8888 of 2016 stands disposed of.
20. There is no order as to costs.
21. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)