

19.02.2025
Court No.23
ML-33
(pp)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA 27633 of 2024

Kartick Chandra Das & Ors.
versus
The State of West Bengal & Ors.

Mr. Nilanjan Bhattacharjee,
Mr. Arpan Guha,
Mr. Abhilash Chatterjee
.....for the petitioner.
Ms. Ananya Neogi
.....for the State.
Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
Ms. Riya Ghosh
.....for SBSTC.

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

The petitioners are three in number. The court fees paid is in respect of one petitioner.

The petitioners are directed to pay deficit court fees by tomorrow (20.02.2025), failing which the writ petition will be treated to have been filed only by the petitioner no.1.

The petitioners were employees of South Bengal State Transport Corporation (in short, SBSTC). It is the case of the petitioners that during the pandemic the petitioners at the request of their employer (SBSTC) had served the organization outside of their normal call of

duty, on being requested to do so, as a consequence whereof, the employer (SBSTC) being satisfied with their services granted promotion to each of the petitioners from the post as stated hereinbelow to the promoted post.

The petitioner no.1, while working as Driver, was promoted to the post of Starter-cum-Ticket Examiner. The petitioner no.2, while working as Deputy Traffic Manager, was promoted to the post of Traffic Manager. The petitioner no.3, while working as Assistant Traffic Manager, was promoted to the post of Deputy Traffic Manager.

After working for some times in the promoted post, it was found by their employer (SBSTC) that the promotion granted to the petitioners was contrary to the service rules of SBSTC. The petitioners, therefor, was again demoted to their original posts.

Challenging such action, the petitioners approached this Court by filing a writ petition, being WPA 5377 of 2021. By an order dated 3rd March, 2021, the decision taken by SBSTC to demote the petitioners has been stayed. This order was carried in appeal by SBSTC by filing an appeal numbered as FMA 822 of 2021 with an application for stay. The Hon'ble Division Bench did not interfere with the order of the learned Single Judge. WPA 5377 of 2021 is still pending final adjudication.

In the meantime, the petitioner nos.1, 2 and 3 have retired from their services respectively on 31.12.2023, 30.11.2022 and 31.01.2023.

The petitioners have filed this writ petition since their gratuity and leave salary have not been paid.

On behalf of the State, it is submitted that the main impediment in releasing the gratuity and leave salary amount is the pendency of the writ petition wherein the decision to demote the petitioner is pending.

SBSTC is otherwise willing to pay the retiral benefits to the petitioners which include gratuity and leave encashment.

After hearing the parties and considering the materials on record, I find that even if the petitioners are unsuccessful in the writ petition, being WPA 5377 of 2021, then also the petitioners and each one of them will get the retiral benefits computed as per the post held by each of them prior to being promoted. Moreover, when the petitioners had worked at the promoted post, they have also drawn salary of higher scale of pay and other benefits available to such promoted post.

In the aforesaid facts and circumstances, I think justice will be sub-served if I direct SBSTC to pay the gratuity and the leave salary as per the post held by them prior to being given the promotion. This is more so because gratuity amount cannot be withheld without

the employee being found guilty as specified under section 4(6) of the Payment of Gratuity Act, 1972.

I, therefore, direct SBSTC to pay the gratuity amount and leave salary amount with accrued interest @ 8% per annum from the date immediately succeeding the date of retirement of each of the petitioners commensurate to the post held by the respective petitioners prior to their promotion.

The petitioners are granted liberty to accept and utilize the money received from SBSTC without prejudice to their rights and contention in WPA 5377 of 2021. Similarly, any payment made by SBSTC will be without prejudice to their rights in WPA 5377 of 2021. The payment has to be made within 31st March, 2025.

The petitioners shall be also entitled to claim any outstanding or balance amount of gratuity and leave salary if the petitioners succeed in WPA 5377 of 2021, even if this writ petition is disposed of.

This writ petition is disposed of with the aforesaid direction.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)