01.07.2025
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Sl. No. 1076
ML
Ct. No. 05

WPA 29689 of 2024

Bramha Gopal Roy
Vs.
The Birbhum District Central Co-operative Bank Ltd. & ors.

Mr. Sankha Subhra Ray
.... for the petitioner
Mr. Arnab Ray
Mr. Shirsho Banerjee
..... for the respondent Nos. 1,3 and 4

Mr. Pradeep Kr. Roy, Sr. Advocate
Mr. Biplab Das
Mr. Partha Sarathi Pal
....for the respondent Nos. 2

1. The petitioner was an employee of Birbhum District Central Co-operative Bank Limited. According to the petitioner, after successfully serving at the Birbhum District Central Co-operative Bank Limited (in short, the "bank") for 38 years retired on 30th November, 2014. According to the petitioner, although, the respondents were obliged to disburse the retiral dues including the gratuity due to the petitioner immediately upon the same having become due, the same was delayed and was ultimately disbursed on 11th February, 2019. Insofar as leave encashment and arrear salary are concerned, the same were disbursed on 20th July, 2019. According to the petitioner, the Bank was obliged to disburse the gratuity and other retiral benefits immediately on his retirement which had not been done in this case. The petitioner had subsequently made a representation to the respondent No. 5 for disbursal of interest on account of delayed payment of gratuity, leave encashment and arrear salary. Despite receipt of such representation, no steps had been taken by the concerned

respondents. It is in the above set of facts that the instant writ petition has been filed.

2. Mr. Ray, learned advocate representing the petitioner by drawing attention of this Court to the order dated 10th January, 2024 passed in WP 16694 of 2019 would submit that the petitioner's husband is similarly placed with the petitioner in the said writ petition. In identical set of facts, the Co-ordinate Bench of this Court had directed the Bank to pay interest at the rate of 9% on the arrear leave salary, delayed payment of gratuity and leave encashment from the date of retirement till the same was actually paid. According to him, similar benefit should be afforded to the petitioner.

3. Per contra, Mr. Ray, learned advocate representing the respondent Bank would submit that the petitioner has approached this Court belatedly. There is no explanation for the delay and as such the petitioner should not be afforded with any relief. In support of his contention that the writ petition should be dismissed on account of delay on the part of the petitioner in approaching this Court, reliance has been placed on the judgments delivered in the case of ***Shiv Dass vs. Union of India & Ors.,*** reported in **(2007) 9 SCC 274** and in the case of ***New Delhi Municipal Council vs. Pan Singh & Ors.***, reported in **(2007) 9 SCC 278**. He would also by relying on the judgment delivered in the case of ***State of Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors.,*** reported in **2014 AIR SCW 6519** would submit that since, the petitioner had been waiting and watching the proceedings and has only approached this Court after the issue has been decided in another matter, no relief should be afforded to the petitioner who is at best a fence sitter.

4. Heard the learned advocates appearing for the respective parties and considered the materials on record. *Prima facie*, it would transpire that the petitioner was an employee of the Birbhum District Central Co-operative Bank Limited. It is also an admitted position and as would appear from the office order dated 27th November, 2014 that the petitioner had superannuated from service on 30th November, 2014. Notwithstanding the aforesaid, the Bank despite being obliged to make available to the petitioner his legal entitlement in the form of leave encashment and arrear salary immediately after his retirement, the same was not done. It is also admitted that legal dues of the petitioner in the form of gratuity was also not disbursed immediately, despite the statute mandating the same. I may note that although, the learned advocate representing the Bank has claimed that the Bank was prevented from disbursing the dues of the petitioner by reasons of the orders passed by Reserve Bank of India, *inter alia*, including the letter dated 15th May, 2014 which is placed on record, I find that the aforesaid contention has already been rejected by a Coordinate Bench of this Court.
5. The aforesaid conduct of the Bank in purporting to stall payment of retiral dues of its own employee who had discharged his duties for the Bank, by relying on the letter dated 15th May, 2014 issued by the Reserve Bank of India apart from being *mala fide* is shocking to say the least. I find, ordinarily as per the provisions contained in the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act") and the Payment of Gratuity Rules, 1972 and especially as provided in Section 7(3) of the said Act, an employer is obliged to pay the amount of gratuity within 30 days from the due

date to the person to whom the gratuity is payable. The obligation to pay the gratuity is with the employer.

6. In the instant case, the employer has failed to pay the gratuity in time. Having itself failed to pay the gratuity within time, the employer cannot be permitted to deny the statutory interest provided for in Sub-Section (3A) of Section 7 of the said Act by contending that the petitioner has not approached this Court promptly. I find that the judgments relied on by the Bank are distinguishable on facts. While the case of ***Shiv Dass*** (supra) proceeds on the premise that the appellant was enrolled in the army medical corps in 1965 and in 1982 he suffered medical issue of weakness of eyesight and became almost 80% disabled despite treatment. He was latter relieved from service being invalidated. In 1983, he claimed disability pension for 80% disability. According to him, since his case was not considered, he filed a writ petition in the year 2005. In the interregnum, however, an order was passed dishonouring his claim, whereupon an appeal was filed which was dismissed in August, 1985. The writ petition was however, filed after 15 years from the date of dishonor of the claim. Notwithstanding the above, the matter was remanded back to the High Court for a decision on merits with the rider that if ultimately the petition succeeds, appropriate relief may be granted but not exceeding three years from the date of presentation of the petition.

7. In the case of ***New Delhi Municipal Council*** (supra), the writ petition was filed after 18 years, claiming parity in pay. They did not agitate their grievance earlier. Although, a reference made by the State was pending, no steps were taken by these petitioners to implead them as parties in the pending

proceedings. On the ground of delay in filing the petition within the reasonable period, the relief was declined.

8. The third judgment relied on by the learned advocate representing the Bank is the case of ***Arvind Kr. Srivastava*** (supra). The said matter related to grant of extension of certain reliefs to same set of employees. In such case as well there was inordinate delay of nine years in approaching the Court, challenging the cancellation of the order of appointments.

9. In none of the cases payment of retiral benefits was involved. It must be noted that right to receive gratuity is a statutory right. Admittedly, there has been delay in payment of gratuity, including the leave encashment. The defence of the Bank to delay the payment has been found unsustainable as has been noted hereinabove.

10. It may be noted that the defence of the Bank to deny the immediate benefit to its employees by reason of the directive issued by the Reserve Bank of India as regards stoppage of business of the bank for the period from 15th May, 2014 till 30th September, 2015 has already been negated not only by a Coordinate Bench of this Court but by the Division Bench of this Court in MAT 1697 of 2019 vide order dated 13th April, 2022. The parties would submit that although, a Special Leave Petition was preferred before the Hon'ble Supreme Court from the order dated 13th April, 2022 by the Bank, such petition has since been dismissed.

11. Having regard thereto, I am of the view that the petitioner is entitled to payment of interest on account of delayed payment of gratuity at the statutory rate, however, since petitioner has made a prayer for payment of interest

@9% per annum, I am of the view that the respondents should be and is accordingly directed to make payment of interest on delayed payment of gratuity and leave encashment benefits, from the date of retirement of the petitioner till the date of actual payment at the rate of 9% per annum within a period of 6 weeks from date. The payment must accompany a chart showing details of computation of delayed payment of interest. The bank is further directed to pay interest @9% per annum on the arrear salary of the petitioner from 1st May, 2014 to 30th November, 2014 from the date following the date of the retirement till the date of payment of arrear salary, with six weeks from date.

12. In view thereof, the writ petition stands allowed without any order as to costs.

(Raja Basu Chowdhury, J.)