

(2012) 06 CAL CK 0078
In the Calcutta High Court
Case No : Writ Petition No. 10266 (W) of 2012

Nikhil Chandra Sen

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 04-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 8

Citation : (2012) 06 CAL CK 0078

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Saikat Banerjee and Mr. Ardhendu Sekhar Biswas, for the Appellant; Jayanta Banerjee for the State and Mr. Pantu Deb Roy for NBSTC, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this WP under art. 226 dated May 11, 2012 is alleging that for undisclosed reasons the respondents, liable to pay him salary arrears, gratuity, leave salary, pension, commuted value of pension, etc. and not disputing his entitlement and their liability, have not paid the benefits. It is not disputed that the petitioner retired from services of North Bengal State Transport Corporation (in short NBSTC) on September 30, 2011, and that NBSTC incurred an obligation to pay him gratuity, leave salary, pension, commuted value of pension, etc. on October 1, 2011. Nor is it disputed that NBSTC has not paid him the benefits.

2. Mr Banerjee appearing for the petitioner submits that he has instructions not to press the salary arrears issue in this WP and to seek liberty to raise the issue, if necessary, with NBSTC. In view of this submission, I think I can take up the WP, for I have determination with respect to the other issues.

3. Mr Deb Roy appearing for NBSTC submits that the petitioner was paid in excess of his entitlement; that the amount payable could not be paid for acute financial crisis; and that for gratuity the petitioner had a remedy under s. 8 of

the Payment of Gratuity Act, 1972. He has relied on an unreported Division Bench decision dated March 27, 2012 in MAT No. 112 of 2012 (The Managing Director, CTC Ltd. & Ors. v. Munshi Abdul Rouf & Ors.).

4. In my opinion, financial crisis, if any, of NBSTC is not a ground to say that it was or is entitled to withhold the petitioner's gratuity, leave salary, pension, commuted value of pension, etc. It was under an obligation to pay the benefits on October 1, 2011. By withholding the benefits it has caused irreparable loss and harassment to the petitioner. This is a litigation generated by it without any valid reason.

5. The plea that for gratuity the petitioner had a remedy under s. 8 of the Payment of Gratuity Act, 1972 is without merit. Availability of a statutory remedy is not a bar to seek the art. 226 remedy. Besides, the petitioner's entitlement to gratuity and liability of NBSTC to pay gratuity both are undisputed.

6. In my opinion, NBSTC should be ordered to pay the petitioner all the benefits to which he is entitled. The relied on Division Bench decision does not entitle NBSTC to withhold the benefits or pay them in the manner it wishes. It is liable to pay interest. I think interest, if ordered at the rate of 7% p.a., will be fair and reasonable. For these reasons, I dispose of the WP giving the petitioner liberty to approach NBSTC with salary arrears issue and directing NBSTC to pay the petitioner gratuity, leave salary, pension, commuted value of pension, etc. according to law with interest at the rate of 7% p.a. from October 1, 2011, within four weeks from the date this order is served on it. No costs. Certified xerox.