
(2013) 01 CAL CK 0034
In the Calcutta High Court
Case No : Writ Petition No. 446 (W) of 2013

Smt. Jolly Chakraborty

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

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

Citation : (2013) 01 CAL CK 0034

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Manas Kumar Ghosh and Ms. Susmita Dey Basu, for the Appellant; Anjusree Mukherjee for the State, Mr. Pantu Deb Roy and Mr. S. Guha Biswas for CSTC, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this WP under art. 226 dated January 8, 2013 is alleging that for undisclosed reasons the respondents, liable to pay service benefits of her husband and not disputing her entitlement and their liability, have not paid the benefits. It is not disputed that the husband of the petitioner died on March 1, 2011 when he was in the services of Calcutta State Transport Corporation (in short CSTC), and that CSTC incurred an obligation to pay his service benefits on March 2, 2011. Nor is it disputed that CSTC has not paid the benefits.

2. Mr. Ghosh 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 CSTC. 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 CSTC submits that the employee was paid in excess of his entitlement; that the benefits 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 CSTC is not a ground to say that it was or is entitled to withhold the benefits. It was under an obligation to pay the benefits on March 2, 2011. By withholding the benefits it has caused irreparable loss and harassment to the petitioner. This is a litigation it has generated 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 such as the one under s. 8 of the Payment of Gratuity Act, 1972 is not a bar to seek the art. 226 remedy. Besides, the employee's entitlement to gratuity and liability of CSTC to pay gratuity both are undisputed.

6. In my opinion, CSTC should be ordered to pay the petitioner all the benefits to which she is entitled. The relied on Division Bench decision does not entitle CSTC 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 directing CSTC to pay the petitioner her husband's service benefits according to law with interest at the rate of 7% p.a. from March 2, 2011, within four weeks from the date this order is served on it. No costs. Certified Xerox.