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**(2017) 04 CAL CK 0010**  
**In the Calcutta High Court**  
**Case No : 23118 of 2016**

SWAPNA BANERJEE

APPELLANT

Vs

STATE OF WEST BENGAL & OTHERS

RESPONDENT

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**Date of Decision :** 07-04-2017

**Acts Referred:**

[Constitution of India](#), [Article 226](#), [Article 143\(1\)](#), [Article 217](#), [Article 329](#), [Article 217\(1\)](#), [Article 324](#), &

**Citation :** (2017) 04 CAL CK 0010

**Hon'ble Judges :** Sambuddha Chakrabarti

**Bench :** SINGLE BENCH

**Advocate :** Arunava Ghosh, B R Bhakat, Anjusri Mukherjee, Rajarshi Dutta

**Final Decision :** Allowed

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## **Judgement**

1. The petitioner joined the West Bengal Handicrafts Development Corporation Limited (the Corporation, for short), i.e., the respondent no. 3 herein as a temporary staff on February 13, 1985. Subsequently her service was confirmed in the year 1986 as the Emporium Manager.

2. On March 2, 2015 she received the notice of retirement informing her that she would be superannuated on August 31, 2015 after attaining the age of 60 years. The grievance of the petitioner is that she has not received all her retiral benefits despite making several representations. On June 3, 2016, she received payment towards gratuity but no interest was paid to her which she is entitled to receive in terms of Payment of Gratuity Act, 1972.

3. The petitioner filed a case before the Controlling Authority under Payment of Gratuity Act and subsequently, she sent a further reminder on July 19, 2016, requesting the respondents to pay the other retiral benefits. She states that a management staff requested her to meet the Managing Director personally. Since she was not in a position to appear personally she authorized her husband to

appear and discuss on the basis of her letter of authorization. When the husband appeared before the Managing Director on August 10, 2016, the authorization was dishonored. She alleges that the husband was advised to move the matter before the appropriate forum. The petitioner, thereafter, sent a notice of demand through her learned Advocate requesting the respondent to release the payment within seven days but in spite of receiving the said demand the respondent did not pay any heed to it and remained silent which compelled her to approach the Court.

4. In this writ petition the petitioner has primarily prayed for a writ in the nature of mandamus commanding the respondents to produce the relevant documents and to quash the inaction by the respondents and to pay the retiral benefits to the petitioner towards leave encashment for 226 days and for other reliefs.

5. It may be mentioned that when the matter was moved initially the Court directed the learned Advocate for the respondent nos. 2 and 3 to file a report in the form of an affidavit in response to the allegation made in the writ petition. It was further directed that the report must specifically disclose the steps taken by the Corporation towards the payment of leave encashment and its present status.

6. When the matter had subsequently appeared in the list on February 10, 2017 none appeared on behalf of the respondent nos. 2 and 3 and no accommodation was prayed for. Consequently no report also had been filed.

7. I heard Mr. Arunava Ghosh, the learned Advocate for the petitioner and have given my anxious consideration to the case of the petitioner and the documents annexed to the writ petition. The documents justify and support the case in the writ petition that the petitioner has time and again written to the Managing Director of the Corporation for releasing the amount of gratuity as well as the amount receivable by her on account of leave encashment.

8. The case of the petitioner stands further validated by the communication made on behalf of the concerned Corporation by requesting her to meet the Managing Director to sort out the matter. That was in response to her letter dated July 19, 2016 wherein she complained that a sum of Rs. 58,697/- has not been paid towards gratuity and also the amount receivable by her on account of leave encashment. The letter of the respondent Corporation did not mention that same had already been received by the petitioner nor did it dispute the sum mentioned by her. She was merely asked to meet the respondent no. 2 for "sorting out" the matter. Even the conduct alleged against the respondent in the writ petition stands circumstantially established from the protest letter sent by the petitioner on August 12, 2016. Since the writ petition has not been contested and no report in the form of an affidavit has been filed, the allegations made in the writ petition as well as the connected documents go absolutely uncontroverted and by applying the principle of non-traverse the Court has not only no difficulty in holding, and as a matter of fact has to hold, that the petitioner has been able to establish her case conclusively.

9. When an employee of the Corporation which is a Government of West Bengal undertaking retires on attaining the age of superannuation he or she is entitled to cash equivalent of leave salary for the leave at his or her credit on the date of retirement. If the rules so provide for such payment a superannuated employee is entitled to it as of right and such payment is to be made by the former employer on his own without the employee's making any application for it. Such has been the point decided in the case of Shiv Dayal Vs. Union of India, reported in AIR 1984 SC 465.

10. In a service which provides for leave encashment an ex- employee has a right to get it and for the employer it is not gratuitous payment. Since the petitioner had already approached the Controlling Authority under the Payment of Gratuity Act, this Court is not passing any order in respect of non-payment of the admissible amount towards gratuity.

11. I, therefore, allow the writ petition by directing the respondent no. 3 Corporation to make payment towards encashment of leave to the petitioner positively within a period of six weeks from the date of communication of the order. Since there has been a substantial delay in making the payment, the amount representing leave encashment shall further carry an interest @ 8% per annum from the date next to the retirement of the petitioner till the date of actual payment. Payment on account of leave encashment as well as the interest on delayed payment shall be made within the timeframe as fixed by this Court.

12. There shall be no order as to the costs.

13. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.