

**(2012) 07 CAL CK 0125**

**Calcutta High Court**

**Case No:** Writ Petition No. 16075 (W) of 2012

Smt. Tripti Guha

APPELLANT

Vs

The State of West Bengal and  
Others

RESPONDENT

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**Date of Decision:** July 31, 2012

**Acts Referred:**

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

**Hon'ble Judges:** Jayanta Kumar Biswas, J

**Bench:** Single Bench

**Advocate:** U.C. Jha and Ms. Maheshwari Sharma, for the Appellant; Mrinal Kanti Biswas for the State and Mr. Pantu Deb Roy, Siddhartha Rej and Mr. S. Guha Biswas for NBSTC, for the Respondent

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### **Judgement**

Hon'ble Mr. Justice Jayanta Kumar Biswas

1. The petitioner in this WP under art. 226 dated July 23, 2012 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 October 6, 2009 when he was in the services of North Bengal State Transport Corporation (in short NBSTC), and that NBSTC incurred an obligation to pay his service benefits on October 7, 2009. Nor is it disputed that NBSTC has not paid the benefits.

2. Mr Deb Roy appearing for NBSTC 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.).

3. In my opinion, financial crisis, if any, of NBSTC 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 October 7, 2009. 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.

4. 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 NBSTC to pay gratuity both are undisputed.

5. In my opinion, NBSTC should be ordered to pay the petitioner all the benefits to which she 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 directing NBSTC to pay the petitioner her husband's service benefits according to law with interest at the rate of 7% p.a. from October 7, 2009, within four weeks from the date this order is served on it. No costs. Certified xerox.