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**(2008) 07 CAL CK 0048**

**Calcutta High Court**

**Case No:** F.M.A. No. 1950 of 2006

Chittaranjan Purokait

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

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**Date of Decision:** July 8, 2008

**Citation:** (2009) 120 FLR 278

**Hon'ble Judges:** Pratap Kumar Ray, J; Manik Mohan Sarkar, J

**Bench:** Division Bench

**Advocate:** Sukumar Ghosh II and Sandip Ghosh, for the Appellant; Samiran Giri, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Pratap Kumar Ray, J.

Challenging the judgment and order dated 10th March, 2006 passed by the learned Trial Judge in W.P. No. 21785 (W) of 2005, this appeal has been preferred on the grievance that the learned Trial Judge did not consider imposition of interest at the rate of 12% per annum on the delayed payment of gratuity. The impugned judgment under appeal reads such:--

10.3.2006

W.P. No. 21795 (W) of 2005

Mr. Sandip Ghosh....for the petitioner Mr. Samiran Giri....for the State Let the written instruction of the State be kept on record.

On perusal of the written instruction it appears that the retiral benefit has also been given to the writ petitioner. Hence no useful purpose would be served by keeping this writ application pending.

The petitioner would, however, be entitled to interest at the rate of 6% per annum on the amount of Gratuity to be calculated from the expiry of six months period until the actual payment is made to the petitioner.

With these directions the writ application is disposed of without any order as to costs.

2. The petitioner moved the writ Court on the grievance that despite his retirement from service, a pensionable service, his retirement benefits were not released. During pendency of the writ application the State Government, however, had prepared the cheque on retirement benefits, namely, the gratuity amounting to Rs. 1,71,505/-. In view of such, the learned Trial Judge disposed of the writ directing to release payment of interest at the rate of 6% per annum on such delayed payment of gratuity but did not grant any relief directing payment of interest on the arrear salary which admittedly was not paid. It is an admitted fact that the petitioner being an employee of Panchayat department, he is controlled by the Death-cum-Retirement Benefit Scheme, 1985. Under Clauses 34 and 35 of the said Scheme a detailed procedure has been laid about filing of the application seeking pension with all relevant papers. It appears that one year before the retirement it was the responsibility of the employer concerned to intimate the employee his date of superannuation with a request to submit the papers relating to release of retirement benefits within three months thereof and the employee ought to have filed the papers which on scrutinizing is required to be processed to the office of Director of Pension and three months before his retirement all the documents relating to pension payment order should be released.

3. Relevant procedural law so far release of such retirement benefits as it appears in Chapter-VIII under Clauses 34, 35,36,37 and 38 reads such:--

#### Chapter-VIII

34. Procedure relating to application for and sanction of pension -- List of W employees due to retire: Each Head of Office shall have a list of its employees prepared every six months, i.e., on the 1st January and 1st July each year, of all employees who are to retire within the next 12 to 18 months of that date. A copy of every such list in the form shown in Annexure-VII shall be supplied to the Director of Pension, Provident Fund and Group Insurance, under Finance Department of the State Government and also to the competent authority, not later than the 31st January or the 31st July, as the case may be, of that year. In the case of persons retiring for reasons other than by way of superannuation the competent authority shall promptly inform the Director of Pension, Provident Fund and Group Insurance, as soon as the impending retirement becomes known to him.

35. The Head of Office shall intimate to every retiring employee eligible for pension under this scheme the date of his superannuation as per records in the Service Book one year in advance of the date on which the employee attains the age of superannuation or before the date of his anticipated retirement, if earlier, and send therewith a copy of form as prescribed in Annexure-VIII (formal application for pension), with the request that it should be returned to him duly completed within a

period of three months from the date of the issue of the intimation. The employee concerned shall return the formal application for pension duly completed together with the documents as mentioned in the application forms and other information as called for in the form as prescribed in Annexure-IX within months to the Head of Office.

36.(1) The Head of Office, on receipt of the formal application for pension, shall immediately prepare the pension papers after due scrutiny and verification of the service claimed and the emoluments actually drawn and forward the same along with the following documents to the competent authority:

(a) The Service Book duly completed and the entries duly verified and signed by the Head of Office.

(b) A certificate to be given by the Head of Office stating that the services claimed have been verified and that the emoluments have been correctly recorded.

(c) Recommendation of the Head of Office stating whether the pension should be admitted or not in the form at Annexure-X.

(2) The competent authority on receipt of pension papers from the Head of Office shall forward the same as early as possible after due scrutiny to the Director of Pension, Provident Fund and Group Insurance under the Finance Department of the State Government or to the officers authorised by him in this behalf along with the sanction in the form at Annexure-X.

37. On receipt of pension papers from the competent authority the Director of Pension, Provident Fund and Group insurance under the Finance Department or an officer or officers authorised by him on this behalf shall scrutinise and determine the admissibility of Pension; Family Pension; Gratuity and commuted value of pension and issue authority for payment in the shape of Pension Payment Order, order for payment of commuted value of pension or payment of gratuity. The sanction of the Director of Pension, Provident Fund and Group Insurance will be communicated to the Head of Office, the competent authority, Sub- Divisional Officer of the Sub-Division, the Treasury or Sub-Treasury, as the case may be, and the pensioners before three months of the date of retirement of the employee concerned. The admissibility of Family Pension in the event of death of the employee concerned shall be indicated in the Pension Payment Order of the employee concerned to facilitate immediate payment of Family Pension when occasion arises.

38. (a) On the basis of the Pension Payment Order pensionary benefits and the amount, of commuted value shall be paid by the Sub-Divisional Officer concerned through Treasury/Sub-Treasury according to the option of the employees concerned in the manner provided in Paragraph-60.

(b) Before Death/Retiring Gratuity is paid, the Sub-Divisional Officer concerned should ensure that every employee clears all his dues. If no such clearance is made, the amount of dues, such as overpayment of pay and allowances, advances, arrears of income tax, etc. shall be recovered out of the gratuity admissible.

4. In the instant case the writ petitioner never was directed by the concerned Block Development Officer of the concerned Block to submit the papers before one year of his superannuation. But after retirement the petitioner submitted all his documents which was processed thereafter and ultimately the Pension Payment Order was released on 4th July, 2002. But even after release of such Pension Payment Order, the amount was not paid. Having regard to the statutory scheme which mandates prompt action to release the pension and other retirement benefits, the authorities concerned caused delay.

5. It is now the settled legal proposition that the retirement benefits are not a charity and/or bounty in the hands of the authorities concerned, but it is a deferred payment and for delayed payment the employer is responsible to pay interest thereof. Following the Apex Court judgment and discussing in details about different views of the Apex Court regarding the delayed payment of gratuity and other retirement benefits, one of us (Pratap Kumar Ray, J.) sitting singly delivered a judgment in the case *Atul Chandra Mahato v. The State of West Bengal and others* 2004 (1) Cal L.J (Cal) 191 whereby direction was given to pay 18% interest on the delayed payment of retirement benefits. In the case [Alok Shanker Pandey Vs. Union of India \(UOI\) and Others](#), , the Apex Court dealt with that issue whereby the direction passed by the Court below was not disturbed so far as grant of interest at the rate of 12% per annum. The Apex Court held that it is nothing but unfair practice as the applicant was deprived of to utilise money. It is the settled legal position now that whenever any person is deprived of the use of money to which he is legitimately entitled to, he accrues a right to be compensated for such deprivation. A Constitution Bench judgment in the case *Executive Engineer Dhenkanal Minor Irrigation Division, Orissa and others v. N.C.. Budharaj (deceased) by L. Rs. and others*, 2001 (2) SCC 721 observed to this effect" basic proposition of law is that a person deprived of the use of money to which he is legally entitled; his right to be compensated for the deprivation by whatever name it may be called viz., interest compensation or damages and this proposition is unmistakable and valid; the efficacy and binding nature of such law cannot be either diminished or whittled down." The same view was reiterated by the Apex Court in the case *South Eastern Coalfields Limited v. State of M.P. and others* AIR 2003 SCW 5258 Even for delayed payment of royalty money under Mines and Minerals (Regulation and Development Act, 67 of 57) the Court imposed liability to pay interest in the case [B.L. Gupta Construction \(P\) Ltd. Vs. Bharat Cooperative Group Housing Society Ltd.](#), a judgment of three Judges Bench. Long back in the case *R. Kapur v. Director of Inspection Painting and Publication Income Tax*, 1994 (69) FLR 1137 (SC) the Apex Court imposed 18% interest for delayed payment of gratuity.

6. Considering all the facts, this Court accordingly is of the view that the writ petitioner became entitled to claim interest on the delayed payment of gratuity and other retirement benefits including the delayed payment of salary. The learned Trial Judge did not address the issue considering the settled legal position as discussed.

7. Having regard to our aforesaid findings and observation and in view of admitted position that the respondent did not pay the retirement benefits in time and caused delay to release it, the writ petitioner/appellant is entitled to get interest. This Court though desire to grant interest at the rate of 18% per annum on such delayed payment of fifteen months salary as well as the gratuity amount, but as the writ petitioner/appellant has prayed for only 12% interest, the Court is granting the same. Accordingly, it is held that the writ petitioner/appellant is entitled to get 12% interest per annum on the gratuity amount with effect from 5th July, 2002 when Pension Payment Order was released till the date of actual payment and also on the delayed payment of fifteen months salary for the period which to be calculated on the basis of the respective dates of payment of monthly salary when the same was required to be paid and the respective date of actual payment as made.

8. The appeal is accordingly allowed to that extent directing payment of interest as per our direction above, by modifying it.

Such payment to be made within two months from this date and compliance report to be filed by respondent No. 6 and the other concerned authorities responsible for such, payment to the High Court Registry by releasing the amount.

Urgent xerox certified copy of this order, if applied for, be given.

MANIK MOHAN SARKAR, J.

9. I agree.