(2012) 08 CAL CK 0110

Calcutta High Court

Case No: Writ Petition No. 14766 (W) of 2012

Sib Nath Basak		APPELLANT
	Vs	
The State of West Bengal and Others		RESPONDENT

Date of Decision: Aug. 6, 2012

Acts Referred:

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

Citation: (2012) 08 CAL CK 0110

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Biswadeb Ray Chowdhury, for the Appellant;Jayanta Banerjee, Ms. Paramita Pal, for the State, Mr. Pantu Deb Roy, Siddhartha Rej and Mr. S. Guha Biswas, for CTC, for the Respondent

Judgement

Hon"ble Mr Justice Jayanta Kumar Biswas

1. The petitioner in this WP under art.226 dated July 10, 2012 is alleging that for undisclosed reasons the respondents liable to pay him balance gratuity, 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 Calcutta Tramways Company (in short CTC) on February 28, 2010, and that CTC incurred an obligation to pay him balance gratuity, etc. on March 1, 2010. Nor is it disputed that CTC has not paid him the benefits.

2. Mr Deb Roy appearing for CTC 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.).

3. In my opinion, financial crisis, if any, of CTC is not a ground to say that it was or is entitled to withhold the petitioner''s gratuity, etc. It was under an obligation to pay the benefits on March 1, 2010. 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 any 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 petitioner''s entitlement to gratuity and liability of CTC to pay gratuity both are undisputed.

5. In my opinion, CTC should be ordered to pay the petitioner all the benefits to which he is entitled. The relied on Division Bench decision does not entitle CTC 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 CTC to pay the petitioner balance gratuity, etc. according to law with interest at the rate of 7% p.a. from March 1, 2010, within four weeks from the date this order is served on it. No costs. Certified xerox.