(2012) 08 CAL CK 0114

Calcutta High Court

Case No: Writ Petition No. 15825 (W) of 2012

Debjani Roy		APPELLANT
	Vs	
The North Bengal State Transport Corporation and Others		RESPONDENT

Date of Decision: Aug. 7, 2012

Acts Referred:

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

Citation: (2012) 08 CAL CK 0114

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Golam Mostafa and Mr. Kousik Bhatta, for the Appellant;Deb Narayan Roy, for the State, Mr. Pantu Deb Roy and Mr. S. Guha Biswas, for NBSTC, for the Respondent

Judgement

Hon"ble Mr Justice Jayanta Kumar Biswas

1. The petitioner in this WP under art.226 dated July 16, 2012 is alleging that for undisclosed reasons the respondents liable to pay her gratuity, leave salary, pension, commuted value of pension, etc. and not disputing her entitlement and their liability have not paid the benefits. It is not disputed that the husband of the petitioner retired from services of North Bengal State Transport Corporation (in short NBSTC) on October 31, 2002, and that NBSTC incurred an obligation to pay him gratuity, leave salary, pension, commuted value of pension, etc. on November 1, 2002. Nor is it disputed that NBSTC has not paid her the benefits.

2. Mr Deb Roy appearing for NBSTC submits that the petitioner was paid in excess of her 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 NBSTC is not a ground to say that it was or is entitled to withhold the petitioner''s gratuity, leave salary, pension, commuted value of pension, etc. It was under an obligation to pay the benefits on November 1, 2002. 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 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 gratuity, leave salary, pension, commuted value of pension, etc. according to law with interest at the rate of 7% p.a. from November 1, 2002, within four weeks from the date this order is served on it. No costs. Certified xerox.