

**(2014) 04 CAL CK 0125**

**Calcutta High Court**

**Case No:** F.M.A. No. 3532 of 2013

Food Corporation of India

APPELLANT

Vs

Tapan Kumar Chowdhury

RESPONDENT

**Date of Decision:** April 10, 2014

**Citation:** (2014) 2 CALLT 611 : (2014) 143 FLR 533

**Hon'ble Judges:** Arun Mishra, C.J; Joymalya Bagchi, J

**Bench:** Division Bench

**Advocate:** Prabir Chowdhury, Advocate for the Appellant; M.L. Mukhopadhyay, Debojyoti Das and Priyanka Chatterjee, Advocate for the Respondent

**Final Decision:** Dismissed

### **Judgement**

@JUDGMENTTAG-ORDER

1. The Intra court appeal has been filed against the judgment and order dated 02.05.2012 passed by the learned single Judge directing the appellant authorities to pay interest on the delayed payment at the statutory rate within six weeks from the date of communication of the impugned order with a further direction to refund a sum of Rs. 1,22,533/- deducted from the gratuity paid to the respondent/writ petitioner along with interest at the rate of 9% per annum thereon. Further, a sum of Rs. 10,000/- was assessed as costs payable to the respondent/writ petitioner. The respondent/writ petitioner has taken voluntary retirement on 1 December 2004. Gratuity was paid belatedly on 22nd March, 2006 after deducting sum of Rs. 1,22,000/- from the said amount on the ground of excess payment to the respondent/writ petitioner on account of erroneous fixation of his pay to a higher scale.

2. Writ petition was filed praying for interest on such delayed payment of gratuity with a further prayer for refund of the aforesaid sum deducted from the said sum paid to the respondent/writ petitioner with interest thereon.

3. Learned Single Judge held that the higher pay scale of pay was sanctioned to the respondent/writ petitioner by the appellant on consideration of representation made by the respondent/writ petitioner for such relief. Accordingly, such payment was not fraudulently procured and there was no scope of recover of the said amount after his retirement. Single Judge also held that no justifiable reason could be given by the appellant/employer in the matter of delayed payment of gratuity and held that the respondent/writ petitioner was also entitled to statutory interest on such delayed payment.

4. According, learned Single Judge directed the appellant authority to pay interest on delayed payment of gratuity at statutory rate within six weeks from the date of communication of the order. The appellant/employer was also directed to refund the sum of Rs. 1,22,000 deducted from his gratuity along with interest at the rate of 9.5% per annum with effect from 22nd March, 2006 until date of payment. The appellant authority was directed to pay a sum of Rs. 10,000 on account of costs and all payments were directed to be made from the date of six weeks from the date of communication of the order.

5. Learned counsel appearing for the appellant submitted that the fixation of pay of the respondent/writ petitioner to the higher scale i.e. CDA pattern of scale was made pursuant to erroneous considerations. Such erroneous decision was procured by the respondent/writ petitioner fraudulently. He was however, unable to point out any misrepresentation made by the respondent/writ petitioner in his representation prayer for fixation of higher scale of pay.

6. It is settled law that when excess payment is made to an employee due to no fault on his part such amount cannot be deducted after his retirement from his post retiral dues. [See [Shyam Babu Verma and Others Vs. Union of India \(UOI\) and Others,](#)

7. In the instant case admittedly higher pay scale was granted to the respondent/writ petitioner in 1997 and he enjoyed the same till his superannuation in 2004. We are not convinced with the submission of the learned counsel that such excess payment was due to any misrepresentation or fraudulent act on the part of the respondent/writ petitioner.

8. That apart, no justifiable explanation is also forthcoming as to why there was delay of about 1 $\frac{1}{2}$  years in payment of gratuity after voluntary retirement of the respondent/writ petitioner in 2004.

9. For the aforesaid reasons, we are of the opinion that the order of the Single Bench is wholly justified and does not call for any interference. Accordingly, the appeal and connected application are dismissed.