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20.12.2023
d.p.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A 26064 of 2023

Barun Nandi
-versus
The State of West Bengal & Ors.

Mr. Rananeesh Guha Thakurta,
Ms. Seujiti Sengupta,
Ms. Dipa Roy.
...For the Petitioner.

Mr. Dipak Kumar Mukherjee,
Mr. Rajib Mukherjee,
Ms. Shyreyasi Bhaduri.
...For the Bhatpara Municipality.

Ms. Nilanjana Dasgupta.
...For the State.

Affidavit-in-opposition and affidavit-in-reply thereto filed in Court today are taken on record.

The order dated 12th September, 2023 passed by the Chairperson of the Bhatpara Municipality rejecting the prayer of the petitioner being the employee for payment of interest on account of the delayed payment of gratuity is impugned in the instant writ petition.

The employee retired in the year 2019 and received the gratuity amount only after filing writ petition before this Court followed by an application for contempt. On the threat of contempt, the gratuity amount of the petitioner was released.

The earlier writ petition filed by the petitioner was disposed of by directing the Municipality to pay the retirement dues including gratuity. The question of granting interest was left open and not decided by the Court. At the time of disposal of the contempt application the petitioner was granted liberty to take steps to claim interest on delayed payment of gratuity in accordance with law. The petitioner thereafter, applied for obtaining interest. The same has been rejected relying on the principle of 'doctrine of waiver and estoppel'.

The Municipality vehemently opposes the prayer for interest on account of the delayed payment of gratuity. The Municipality has filed affidavit-in-opposition relying upon the principle of waiver and estoppel. It has been submitted that as the said prayer of the petitioner was not allowed by the Court on the earlier occasion, the petitioner is estopped from raising the issue of payment of interest. It has to be taken that the petitioner has waived his right to claim interest.

The aforesaid issue fell for consideration before this Court in WPA 26043 of 2023 (Lakhan Oraon –vs- The State of West Bengal & Ors.). The aforesaid writ petition was disposed of by this Bench on 20th December, 2023 by setting aside the impugned order of rejection and by passing further direction.

The petitioner herein stands in the same footing as that of Lakhan Oraon (supra) and, accordingly, the same direction is passed herein. The principle of doctrine of waiver and estopple as relied upon by the Municipality in rejecting the claim of interest cannot be made applicable in the facts and circumstances of the instant case.

The impugned order is set aside. The Municipality is directed to pay interest @10% PA on the gratuity amount from the date on which it fell due till the date of actual payment. If the aforesaid amount is not disbursed within a period of eight weeks from today, the Municipality will be bound to pay to the employee additional interest of 3% PA i.e. 10+3=13% PA on account of delayed payment of gratuity to be calculated on the due amount from the date it became payable till the date of actual payment.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)