IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

MAT 698 of 2025
with
CAN 2 of 2025
In
W.P.A. 2325 of 2024

MD. ASHADUL HAQUE
VS

THE STATE OF WEST BENGAL AND ORS.

Before: The Hon'ble Justice Shampa Sarkar
&
The Hon'ble Justice Arjun Ray Mukherjee

For the Appellant	:	Mr. Dhiman Kumar Sengupta, Adv. Ms. Farhin Mustaque, Adv.
For the State	:	Mr.D.N. Ray, Ld. G.P. Ms.Susmita Saha Dutta, A.G.P. Ms. Tanusree Ghosh, Adv.
For the respondent Nos. 3 to 5	:	Mr. Saikat Banerjee, Sr. Adv. Mr. Arnab Ray, Adv. Ms. Shrabanti Chatterjee, Adv. Mr. Shirsho Banerjee, Adv.
CAV on	:	12.08.2026
Judgment delivered on	:	18.08.2026
Judgment uploaded on	:	18.08.2026

Arjun Ray Mukherjee, J.

1. This is an appeal against an order dated 24th January, 2025 arising out of WPA 2325 of 2024. By the said order, the learned Single Judge refused to direct the respondents to release the appellant's gratuity until the disposal of the criminal case pending against him.

2. The brief facts of the appellant's case are stated hereinbelow:

a) The appellant was an employee of Birbhum District Central Cooperative Bank Limited/respondent No. 5 (hereinafter referred to as 'the respondent bank') duly registered under the West Bengal Cooperative Societies Act, 1940 and at present governed by the West Bengal Cooperative Societies Act, 2006 (hereinafter referred to as 'the said Act, 2006').

b) The appellant retired from the service of the said bank on 31st January, 2013, on attaining the age of superannuation. His retiral benefits were withheld by the respondent bank for a substantial period of time. All of a sudden, in 2023, the respondent bank issued a purported order dated 26th October, 2023, whereby an allegation of siphoning of public money was levelled against the appellant. The respondent bank decided to keep the retiral benefits of the appellant in a suspense account till the determination of the financial loss to the bank. By the said order dated 26th October, 2023, the respondent bank also formed a Committee in order to ascertain from the official records the veracity of allegations levelled against the appellant.

3. Since no retiral benefits were released in favour of the appellant, he filed the instant writ petition, *inter alia,* seeking the following reliefs:

> "*a) A writ in the nature of mandamus directing the Respondent Bank to release the payment of Provident Fund amounting Rs. 10,31,313/-money to the petitioner promptly along with 10% interest per annum from the date of superannuation till the date of actual payment;*
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> *b) A writ of in the nature of mandamus commanding and directing the Respondent No. 5 to forthwith release the Leave Encashment equivalent of pay in respect of earned leave for 180 days standing to the credit of the petitioner's leave account amounting to Rs. 2,58.714/- at the rate of last drawn monthly basic pay and dearness allowance together with 10% interest per annum from the date of retirement till such disbursement;*
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> *c) A writ in the nature of mandamus commanding and/or directing the Respondent Bank, their men, agent to disburse the amount of Gratuity according to the provisions under Section 4 of the payment of Gratuity Act, 1972 amounting to Rs 9,57,740/- with 10% interest per annum from the date of retirement till the date of actual payment;*
>
> *d) A writ in the nature of mandamus setting aside the purported illegal order dated 26.10.2023 with immediate effect and release the retirement benefit with interest from the date of retirement till the date of actual payment*
>
> *e) A writ in the nature of certiorari calling upon the respondents to certify and transmit the records of the case before this Hon'ble Court so that conscionable justice may be administered to your petitioners by granting relief in terms of the prayers given above;"*

4. The primary issue which came up for consideration before the learned Single Judge was whether the appellant's retiral dues could be withheld on the ground of criminal proceedings pending against him.

5. The learned Single Judge, having considered the rival submissions made by the parties, passed the order dated 24th January, 2025. The operative portion of the order is as follows:

> *"Therefore, I am not inclined to direct the release of the petitioner's gratuity until the disposal of the criminal case against him. However, the leave encashment and provident fund dues should be released immediately. The bank is directed to take the necessary steps to release the provident fund and leave encashment dues, subject to compliance with required formalities by the petitioner, within one month from the date of communication of this order.*
> *Accordingly, WPA 2325 of 2024 is disposed of."*

6. The appellant, being aggrieved by such order, preferred the instant appeal. During pendency of the instant appeal, pursuant to an order dated 07.04.2026 passed by this Court, the gratuity amount was paid by the respondent bank to the appellant.

7. In view of the above, the only issue that fell for our consideration was whether the appellant was entitled to receive interest on delayed payment of gratuity. This issue was framed in the appeal vide order dated June 9, 2026, which is quoted below :-

> *"2) Let the matter be adjourned for two weeks. Mr. Sengupta shall satisfy us on the society's action of withholding the gratuity and the right to payment of interest on account of delayed payment of gratuity."*

8. Mr. D.K. Sengupta, learned counsel appearing for the appellant referred to Clause 19 under Appendix 5 of Rule 106 of the West Bengal Societies Rules, 2011. (hereinafter as 'the said Rules, 2011').

Clause 19 under Appendix 5 of the said Rules, 2011 provides as follows:-

"***19. Retirement and Retirement benefits***

(1) Every employee of a Co-operative society shall retire on superannuation attaining the age of 60 years.

(2) Employees of a co-operative society shall be eligible to payment of gratuity as per the provisions of the payment of Gratuity Act, 1972 (39 of 1972).

(3) An employee of a Co-operative society who retires on superannuation or otherwise shall be eligible to receive cash equivalent of pay in respect of earned leave standing to his credit provided that the quantum of leave encashable under this sub-section shall not exceed three hundred days.

(4) If the employee dies before superannuation, the benefits under sub-rule (2) and (3) and all other dues shall be payable to his heirs or nominees, as the case may be."

9. Mr. Sengupta submitted that the appellant was entitled to receive interest on the delayed payment of gratuity and the same cannot be withheld.

10. Per contra, Mr. Saikat Banerjee, learned Senior counsel appearing for the respondent bank also relied upon Rule 106 of the said Rules, 2011, which provides as follows:

"***106. Method of recruitment and conditions of service of the officers and employees of Co-operative societies. --*** *The method of recruitment and conditions of service of the officers and employees of Co-operative societies [other than Co-operative Credit Structure Entities] shall, subject to the terms of specific contract enforceable by* *law and the provisions of any law for the time being in force, be as enunciated in the Appendix to this Chapter:*

Provided that if any particular matter is not covered in the specific contract, the matter shall be guided by the method of recruitment and conditions of service as indicated in the Appendix to this Chapter."

11. He submitted that the above Rule was applicable to the method of recruitment and conditions of service of the officers and employees of cooperative societies except to the employees of 'cooperative credit structure entities'. According to him, the appellant was an employee of the respondent bank, which was a cooperative credit structure entity, and in view of a specific exclusion clause in Rule 106, none of the provisions under Appendix 5 of Rule 106 of the said Rules, 2011 would apply to the appellant and thus he was not entitled to receive any retiral benefit pursuant to such provisions.

12. In support of his contention Mr. Banerjee relied on a judgment reported in **2025 SCC OnLine Cal 816 [Birbhum District Co-operative Bank Ltd. And others vs. Paresh Kumar Mukherjee and others].** Mr. Banerjee referred to Paragraph 28 of the said judgment which provides as follows:

> *"28. Rule 106 keeps the cooperative credit structure entities out of its purview when it says "other than cooperative credit structure entities". This exclusion was introduced with effect from February 1, 2013. By virtue of such exclusion, the cooperative structure entities stood excluded, from the purview of Rule 106 and by necessary corollary from Clause 19 under Appendix 5. Such being a plausible interpretation, and since, the claim of the private respondents are founded upon Clause 19 of Appendix 5 of Rule 106, was claimed must be held to be*

without any foundational basis as the appellant No. 1 is outside its purview."

13. Mr. Banerjee placed reliance on Section 134A of the Act of 2006 which provides as follows:

> *"134A. Overriding effect.- Notwithstanding anything contrary or inconsistent contained in this Act or the rules framed thereunder or by-laws of any registered society or orders issued thereunder, the provisions of this Chapter shall have overriding effect."*

It is relevant to note that the words 'this Chapter' meant 'Chapter XIIIA' of the said Act, 2006 which dealt with 'Special provisions applicable to the Cooperative Credit Structure Entities'.

14. Mr. Banerjee also relied on Section 134C[2][d] of the Act of 2006 which states as follows:

> "134C. Special provisions applicable to the Co-operative Credit Structure Entities. –
>
> [1] ……….
>
> [a] ……….
>
> [b] ……….
>
> [2] A Co-operative Credit Structure Entity shall have autonomy in all financial and internal administrative matters including the following areas:
>
> [a] ……….
>
> [b] ……….
>
> [c] ……….
>
> [d] personnel policy, staffing, recruitment, posting and compensation for the audit;"

15. Mr. Banerjee contended that since the respondent bank, which was a Co-operative Credit Structure Entity, enjoyed autonomy in all financial and internal administrative matters including personnel policy, staffing, recruitment, posting and compensation for the audit, the bank would not be guided by the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as the said Act, 1972).

16. According to Mr. Banerjee, even if, for the sake of argument, it was presumed that Rule 106 of the said Rules, 2011 applied to the appellant, but by virtue of the overriding effect of Section 134A of the said Act, 2006, the respondent bank was not liable to pay interest.

17. We have heard the parties.

18. The appellant retired from the service of the respondent bank on 31st January, 2013 as stated hereinabove. By a notification dated 26th December, 2012, Rule 106 of the said Rules, 2011 was amended and the employees of the Cooperative Credit Structure Entities were excluded from the purview of Rule 106 with effect from 1st February, 2013.

19. Therefore, on the date of the retirement of the appellant, Rule 106 squarely applied to him and as such all provisions contained in the appendix to Chapter V under Rule 106 of the said Rules of 2011 also applied to him. The submissions of Mr. Banerjee are misconceived. The appellant was very much entitled to receive the retiral benefits which were rightly paid to him. It is an admitted fact that there was a delay in releasing the gratuity amount to the appellant and such delay is admittedly attributable to the respondent Bank. The respondent bank cannot withhold the interest on the delayed payment of gratuity on the pretext of the exclusion of 'cooperative credit structure entities' in Rule 106 of the said Rules, 2011 in view of the date of retirement of the appellant.

20. Let us now examine as to whether by invoking Section 134C[2][d] of the Act of 2006, the respondent bank can withhold the interest amount payable to the appellant.

21. Clause 19 under Appendix 5 of Rule 106 of the said Rules of 2011 provides that employees of a co-operative society shall be eligible to receive payment of gratuity as per the provisions of the payment of Gratuity Act, 1972. Therefore, the appellant is governed by the provisions of the said Act, 1972. The relevant provisions of Section 7 of the said Act, 1972 provides as follows:

> *"7. **Determination of the amount of Gratuity**.- (1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.*
>
> *(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (i) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.*
>
> *[(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.*

(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3) the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may, by notification specify: Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the Controlling Authority for the delayed payment on this ground]."

22. It is also to be noted that Section 14 of the said Act, 1972 has an overriding effect over the provisions of any other enactments. Relevant provisions of Section 14 of the said Act, 1972 provide as follows:

"14. Act to override other enactments, etc.- The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

23. Therefore, in view of Section 7[3-A] of the said Act, 1972, if the gratuity amount is not paid by the employer within thirty days from the date it becomes payable, the employer shall be liable to pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time. It is needless to mention here that the provisions of Section 4(6) of the said Act, 1972 do not apply to the case of the appellant.

24. In view of Section 14 of the said Act, 1972, which is a Central Act, and has an overriding effect over any inconsistent provisions of other enactments including the Act of 2006, which is a State Act, the provisions of the said Act of 1972 will prevail over any such inconsistent enactments.

25. It is needless to mention here that, even where no statutory provision applies, one is entitled to receive interest for delayed payment. It is now well settled that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by interest or damages or compensation. In this connection, reference may be made to the decision reported in **Alok Shanker Pandey v. Union of India** reported in **(2007) 3 SCC 545. Paragraph 9 of the said judgment provides as follows:**

> *"9. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence, equity demands that A should not only pay back the principal amount but also the interest thereon to B."*

26. The law laid down by a coordinate Bench of this Court in **Birbhum District Co-operative Bank Ltd.**[supra] cited by Mr. Banerjee does not apply to the present case. Paragraph 3 of the said judgment deals with the facts of the said case which is as follows:

> *"3. Learned Senior Advocate appearing for the appellants submits that, seven persons approached the Writ Court for grant of leave encashment as part and parcel of their recruitment benefits. He submits that, all seven writ petitioners superannuated subsequent to February 1, 2013."*

27. The writ petitioners in **Birbhum District Co-operative Bank Ltd.**[supra] superannuated subsequent to the date of insertion of the words 'cooperative credit structure entities' in Rule 106 of the said Rules i.e. 01.02.2013, whereas, the appellant in the present appeal retired on 31st January, 2013, i.e. prior to such substitution.

28. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. In this connection, reference may be made to the decisions reported in **2006(12) SCC 583 [Ispat Industries Ltd. Vs. Commissioner of Customs, Mumbai]** and **2014(4) SCC 626 [Dinubhai Boghabhai Solanki Vs. State of Gujarat and Others].**

29. Therefore, the judgment passed in **Birbhum District Co-operative Bank Ltd.** [supra] does not come to the aid of Mr. Banerjee.

30. Mr. Banerjee's further contention that the autonomous power of the respondent bank flowed from Section 134C of the said Act of 2006, which provided that the Co-operative Credit Structure Entities shall have autonomy in all financial and internal administrative matters including personnel policy, staffing, recruitment, posting and compensation for the audit, permits it to refuse interest, is contrary to law.

31. The word 'autonomy' mentioned in Section 134C means the power to govern Co-operative Credit Structure Entities in respect of areas mentioned therein independently and without unnecessary interference from outside. One may find identical provision in Article 43B of the Constitution of India which says that the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

32. The above provisions have nothing to do with the facts of the present case. The word 'autonomy' mentioned in Section 134C of the said Act of 2006 does not empower the respondent Bank to deprive a citizen of his legitimate right nor can it be used as a device by the respondent bank to punish a retired employee in a manner which is not permissible in law. The appellant was allowed to retire in 2013 and only in 2023 the allegations were levelled against him.

33. Before parting, we feel it necessary to say a few words on the 'delayed payment of retiral dues' in case of an employee. An employee, who is entitled to receive his service benefits within the time frame prescribed by law [in normal cases immediately after his retirement], if deprived of such benefits by the employer on some arbitrary grounds, and thereafter if the payment is made by the employer pursuant to a direction of a Court at a belated stage, the employer, by making such payment, does not do any favour to the employee. It is neither an act of grace nor a compassion on the part of the employer, but it is an employee's right under the law. The act of withholding the retiral dues by the employer for more than 13 years without any valid justification, is highly reprehensible. In our view, withholding legitimate service benefits, particularly retiral benefits, without any valid reasons is an act contrary to the service rules. It not only causes immense hardship to the employee at the fag end of his life, but also puts his entire family in a tremendous financial crisis. An employer cannot violate the service conditions of an employee and resort to such means as an act of reprisal, for whatever reasons, thereby circumventing the law.

34. For the reasons set out by us hereinabove, we have no hesitation in holding that, by withholding the gratuity and then the interest portion payable to the appellant on delayed payment of gratuity, the respondent bank had enriched itself unlawfully. The entire action of the respondent bank suffers from the vice of malice and the same is wholly illegal.

35. Coming to the order impugned before us, we find that the learned Single Judge was of the opinion that gratuity was not payable to the appellant till the conclusion of the criminal proceeding. However, we find from the records that, although no disciplinary proceeding was initiated against the appellant during his service, the criminal proceeding was initiated four years after his superannuation. The bank has not been able to satisfy us that the service rules permit withholding of gratuity payable to an employee during pendency of any criminal proceeding against the said employee, even after retirement. Under such circumstances, the order impugned being erroneous is set aside.

36. In view of the above, the order under appeal dated 24th January, 2025 is set aside.

37. We direct the respondent bank to pay interest at "... the rate notified by the Central Government for repayment of long-term deposits". We further direct that in case no such notification has been issued, the appellant would be entitled to interest @ 8% per annum from the date of entitlement of gratuity till the date of disbursement thereof. We also impose costs of Rs. 50,000/- to be payable to the appellant by the respondent bank. The respondent bank shall positively pay the interest amount and the amount of cost within a period of three weeks from the date of the order. The respondent bank shall furnish a copy of the notification of the Central Government and a calculation of the interest amount to the appellant while making the payment on the direction hereinabove.

38. The appeal stands allowed.

39. No order as to costs.

40. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(ARJUN RAY MUKHERJEE, J.) **(SHAMPA SARKAR, J.)**

Later,

41. Mr. Banerjee, learned counsel for the respondent Nos. 3 to 5 seeks stay of operation of this judgment and order. The prayer is considered and rejected.

I Agree.

(ARJUN RAY MUKHERJEE, J.) **(SHAMPA SARKAR, J.)**