

12-12-2019
Court No.3
Ab
SI/18.

**CIRCUIT BENCH OF
CALCUTTA HIGH COURT
AT JALPAIGURI
WRIT APPELLATE JURISDICTION
APPELLATE SIDE**

W.P.A. 1044 OF 2019

**Md. Kachhimuddin
Vs.
The State of West Bengal & Ors. .**

Mr. Deborshi Dhar
. . .For the Petitioner.

Mr. Hirak Barman
Ms. Bedashruti Bose

. . .For the State.

Affidavit of service filed in Court today is kept with the record.

The material facts of the case are admitted and hence I have not called for affidavits.

This petitioner was appointed as an Assistant Teacher of a concerned School and he retired from service on December 31, 2007. The first pension payment order was issued on February 07, 2008 and the arrear pension was disbursed. Under the ROPA Rules, 2009 there was revision of the pensionary and gratuity amount payable to the petitioner. The revised pension payment order was issued on April 11, 2012 and the arrear pension and gratuity was disbursed on August 30, 2012 in terms of ROPA, 2009. The petitioner claims interest on delayed payment of the revised arrear pension.

I have heard the Learned Counsel for the petitioner and I have considered the orders passed by this Court in similar facts. It is settled law that retired employee is entitled to some amount of interest on delayed payment of arrear pension.

Although the point of delay or limitation has not be urged on behalf of the State, I deem it appropriate to address that issue briefly. The Limitation Act in terms thereof does not apply to the writ petitioners. The Hon'ble Supreme Court in the case of Union of India Vs. Tarsem Singh reported in (2008) 8 SCC 648 has observed that if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. It is settled law that the right of a retired employee to get his retiral dues on the date of attaining superannuation is a valuable right which accrues in his favour on the date of his attaining superannuation. Further, arrear is no more considered to be a bounty to be handed out by the State at its whim. An employee has a statutory right to receive arrear upon retirement. If payment of such arrear is delayed, the retired employee is surely entitled to get some interest for such delayed payment.

The rule that the High Court may not enquire into belated and stale claim is not a rule of law, but one of practice based on sound and proper exercise of discretion. The principle on which the relief to a party is denied on the ground of laches or delay is that the right which have accrued to others by reason of delay in approaching the Court should not be allowed to be disturbed. In the present case, it was the bounden

duty of the State to disburse the arrear amount on the due date. If it has failed to do so and has released such amount after unexplained delay, it is obliged to pay interest to the retired employee. This is compensatory in nature. Pension and arrear are aimed at maintaining the life of a retired employee and his/her dependents, these are welfare provisions and even if there is delay on the part of a retired employee to approach the Court claiming interest on delayed payment of arrear, the delay per se should not be the ground for rejection of writ petition. No third party interest will be affected by a direction on the State to compensate the retired employee for delayed payment of arrear by paying interest at a reasonable rate.

In view of the aforesaid, I direct the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal as also the concerned Treasury Officer to pay interest to the writ petitioner @ 8% per annum on the revised gratuity and arrear pension amount calculated on and from June 01, 2009 till actual date of payment.

Such payment is to be made within eight (08) weeks from the date of communication of this order to the concerned authorities.

Since no affidavit-in-opposition has been invited, the allegations contained in the writ petition, are deemed not to be admitted.

The Writ Petition being W.P.A. 1044 of 2019 is, thus, disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be handed over to the parties on compliance of necessary formalities.

(RAJARSHI BHARADWAJ, J)