

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Via Video Conference)

WPST 8 of 2020

Nirmal Chandra Saha
Vs.
The State of West Bengal & Ors.

Mr. Sukanta Chakrabarty
Mr. Anindya Halder
... For the petitioner

Mr. Tapan Kumar Mukherjee
Ms. Susmita Chatterjee
... For the State

The writ petition covers a rather narrow campus. All that the petitioner seeks is the interest for the delayed payment of the petitioner's retiral benefits. At first blush, the prayer seems reasonable; but the propriety of the claim needs to be assessed.

The petitioner retired from government service on November 30, 2002. At the relevant time, a criminal case had been instituted by the State, inter alia, against the petitioner. As a consequence, disciplinary proceedings were also drawn up. On February 5, 2007, this Court quashed the criminal proceedings at the behest of the petitioner herein. Thus, the basis of the disciplinary proceedings was undone, though it was open to the employer to pursue the disciplinary action in certain exceptional circumstances.

The disciplinary proceedings continued and culminated in an order of punishment in the year 2009.

The petitioner challenged the same before the West Bengal Administrative Tribunal and failed. In the resultant petition against the order of the Tribunal, the petitioner succeeded. The order of this Court of December 16, 2010 held that upon the severance of the master-servant relationship between the State and this petitioner on his reaching the age of superannuation at the end of November, 2002, the disciplinary action could not continue unless the charge was of the petitioner having caused pecuniary loss to the employer. This Court, in such order of December 16, 2010, set aside the order of punishment and quashed the disciplinary proceedings altogether. As a consequence of the proceedings being quashed, particularly on the strength of the reasoning furnished in the relevant order, the legal position is that the proceedings did not survive after the petitioner attained the age of superannuation. In other words, the legal consequence of the order of December 16, 2010 was that the disciplinary proceedings stood dropped and concluded as at November 30, 2002.

As is the general practice, the petitioner's retiral benefits were withheld pending the outcome of the departmental proceedings against him. It was only upon the order of punishment being set aside and the disciplinary proceedings being quashed altogether with effect from the date of the petitioner's retirement, that the petitioner became entitled to receive the retiral benefits. In this regard, the order dated December 16, 2010 needs to be seen for the particular direction that was issued therein:

“The respondent authorities herein are directed to disburse all admissible retiral benefits to the petitioner without any further delay but positively within a period of three weeks from the date of communication of this order.”

What is evident from the said order and, particularly, the direction extracted above is that at the time that this Court passed the order of December 16, 2010, it was aware that the petitioner had not been paid his retiral dues. The effect of the earlier part of the order dated December 16, 2010 was that the departmental action stood terminated on November 30, 2002. Thus, it is evident that this Court, at the time of passing the order dated December 16, 2010, was conscious of the fact that there was an enormous delay in the disbursement of the retirement benefits to the petitioner, given that the departmental action could not have stretched beyond November 30, 2002. Yet, in passing the order dated December 16, 2010, the Court merely directed “all admissible retiral benefits” to be made over to the petitioner “within a period of three weeks” from the date of communication of such order. The Court could have, at such stage, made an order for the payment of interest for the delayed release of the retiral benefits to be paid to the petitioner; but upon such aspect not being covered by the order, it necessarily implies that the Court consciously declined to grant interest to the petitioner despite noticing the inordinate delay in such regard. The entitlement to interest was as a consequence of the substantial order passed and, indeed, incidental thereto.

It was open to the petitioner, at the time that the order dated December 16, 2010 was passed, to make a prayer for the interest for the entire delayed period to be paid by the employer. The petitioner ought to have made such prayer; if anything, as a necessary consequence of the disciplinary proceedings being terminated as at November 30, 2002.

The legal consequence of the petitioner not seeking the relief from the Court when the petitioner was entitled to obtain the same and the implied rejection of the further relief by the Court as evident from the order dated December 16, 2010 precluded the petitioner from raising such issue or seeking such benefit any further. Though, the West Bengal Administrative Tribunal, in its judgment and order impugned dated September 27, 2018, has not alluded to such aspect of the matter, it is clear that the Tribunal did not have the authority to pass any order for payment of interest for the period prior to the order dated December 16, 2010. The remainder of the order is not challenged by either side and it is not the petitioner's case that he is entitled to any further interest after receiving the retiral benefits sometime in August, 2014.

Res judicata and its several aspects are matters of public policy and of universal application in civil matters. Such rule places an embargo on the adjudicating body to consider a matter which ought to have been considered or is deemed to have been considered in course of earlier

proceedings or at an early stage of the proceedings and which cannot be legally reopened.

In the light of the above, the petitioner is found to be not entitled to any claim on account of interest for the delayed payment of the petitioner's admitted retiral benefits prior to the period covered by the order dated December 16, 2010. The petitioner ought to have sought a direction for payment of interest and the order dated December 16, 2010 may have included such a direction; but in the absence of either, the prayer could not be made by the petitioner any further.

WPST 8 of 2020 is disposed of with the observation that this Court does not have any authority to grant any further relief to the petitioner other than what has already been done by the impugned order.

There will be no order as to costs.

Certified website copies of this order, if applied for, be urgently made available to the parties, upon compliance with the requisite formalities.

(Sanjib Banerjee, J.)

(Arijit Banerjee, J.)