22 **03.09.2020.**

abhar/bdutta

WPA 3313 of 2020

Samares Chandra Mukhopadhyay
Vs
State of West Bengal & Others

(Via Video Conference)

Ms. Sabita Khutia (Bhunya).
... For Petitioner
Mr. Debasis Basu.
... For State

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

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

The petitioner was appointed as a High School Assistant Teacher and retired from service on **30.11.1999**. The pension payment order was issued on **29.01.2002**. The gratuity amount and the arrear pension was paid to the petitioner on **19.02.2002**.

Although the point of delay or limitation has not been urged on behalf of the State, I deem it appropriate to address that issue briefly. The Limitation Act in terms does not apply to writ petitions. The Hon'ble Supreme Court in the case of **Union of India vs. Tarmen Singh reported in (2008) 8 SCC 648** has observed that if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights or 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, gratuity and pension are no more considered to be a bounty to be handed out by the State at its whim. An employee has a right to receive gratuity and pension upon retirement. If payment of such gratuity and pension is delayed, the retired employee is surely entitled to get some interest for such delayed payment.

The Rule that the High Court may not entire 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 gratuity and pension 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 gratuity 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 gratuity and pension, the delay per se should not be the ground for rejection of the writ petition. No third party interest will be affected by direction on the State to compensate the retired employee for delayed payment of gratuity and pension by paying interest at a reasonable rate.

I have heard learned counsel for the parties and I have considered the orders passe by this Court in similar facts. It is settled law that a retired employee is entitled to some amount of interest on delayed payment of gratuity and pension.

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 at the rate of 9% per annum on the gratuity amount as well as arrear pension for the period from 01.12.1999 till 19.02.2002.

Such payment is to be made within eight weeks from the date of communication of the certified copy 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.

WPA 3313 of 2020 is, accordingly, disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis.

(Arijit Banerjee, J.)