

16 03.09.2020.

abhar/bdutta

WPA 8419 of 2019

Dwijendranath Chakdar
Vs
State of West Bengal & Others
(Via Video Conference)

Ms. Sabita Khutia (Bhunya).
... For Petitioner
Mr. Tapan Kumar Roy.
... 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 31.12.2007. The first pension payment order was issued on 17.12.2007. The ROPA Rules, 2009 came into effect on May 19, 2009. As per the provisions of the said Rules, there was revision of the pensionary and gratuity amount payable to the petitioner. The revised gratuity and arrear pension amount was paid to the petitioner on 07.12.2010.

I have heard learned counsel for the parties and I have considered the orders passed by this Court in similar facts.

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 entertain 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.

Since admittedly there is a delay in payment of revised gratuity and pension amount to the petitioner and having regard to the various judgements and orders of this Court 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 revised gratuity and arrear revised pension amount calculated on and from June 1, 2009 till actual date of payment.

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 8419 of 2019 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.)