

17.12.2020.
Item No. 7

W.P.A. 10005 of 2018

Mithilesh Kumar Singh
Vs.
The State of West Bengal and others.

Mr. Ekramul Bari,
Mr. Syed Mansur Ali.
... for the petitioner.

Mr. Biswabrata Basu Mullick
... for the State.

Mr. Subrata Bhattacharjee.
... for the respondent no. 6.

It appears from the record that this writ petition was allowed on 26th November 2018 granting relief to the petitioner by the Hon'ble Justice Protik Prakash Banerjee, unfortunately His Lordship is no more with us. The writ petition was allowed by passing the following order:

“Affidavit of service is taken on record.

The writ petitioner is aggrieved by the delayed payment/release of retirement benefits. It does not appear from the records nor is it the case of the State of West Bengal, that the delay occurred due to any fault of the employee who was superannuated. The delay in making the writ petition for an enforcement of the fundamental right of the petitioner relating to the fruits of labour of the superannuated employee amounting to livelihood has been explained to the satisfaction of this Court. Accordingly, there shall be an order commanding the respondents to disburse the interest on the amount of the said retirement benefits being **arrear paension** which was paid late from the date superannuation of the said employee till the date of actual disbursement of interest @ 10 per cent (simple per annum) within four weeks from the date of communication of the order to the respondents. In default an additional two per cent (simple per annum) shall be paid to the petitioner on the entire sum (original amount plus interest). This

order is passed on consideration of similar orders passed by both this Court and coordinate benches on considering the binding precedents both of the Hon'ble Supreme Court and of this Court the writ petition is allowed to the above extent. There shall be no order as to costs."

It also appears from the record that by subsequent order dated 29th March 2019 the said order dated 26th November 2018 was recalled for the reason of non-filing of affidavit of service, though learned Advocate for the petitioner shows a copy of affidavit of service which was affirmed on 16th July 2018, which may be kept on record and, in fact, such affidavit of service was affirmed before the date of passing of the order of recalling of the order dated 26th November 2018.

I am of the view that it would be unjust to penalize a litigant on such technicalities considering the fact as stated above. Therefore, I recall the order dated 29th March 2019, by which the order dated 26th November 2018 was recalled. Now, the order dated 26th November 2018 automatically stands revived.

Accordingly, this writ petition is disposed of by directing the respondents concerned to implement the order dated 26th November 2018, as quoted above, within eight weeks from the date of communication of this order subject to compliance of all formalities required to be observed in law on the part of the petitioner and the school authority.

WPA 10005 of 2019 is disposed of.

