

02.03.2021
Ct. No.13
Sl. No.159
akd

W.P.A. 5510 of 2021 *[via video conference]*

[Durgabala Sardar -Vs- State of West Bengal & Ors.]

Mr. Goutam Kumar Maity
... .. for the petitioner

Despite service of notice, none appears on behalf of the State-respondents. Affidavit of service filed in Court today be kept with the record.

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

The petitioner's husband was a Government employee and died-in-harness on 22.07.2011. The grievance of the petitioner is that the arrear pension amount was disbursed only on 18.02.2013. She claims interest on the delayed payment of the arrear pension.

It is now settled law that the gratuity amount is to be released to the retired employee immediately upon retirement. If there is a delay in releasing the gratuity and pension amount, the retired employee is entitled to interest.

Various orders have been passed by this Court holding that the retired employee is entitled to receive interest on delayed payment of gratuity and arrear pension. Some of such orders have been placed before me.

Although the point of delay or limitation has not been urged on behalf of the State as none appeared on its behalf, 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 Versus 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 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, gratuity 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 gratuity upon retirement. If payment of such gratuity 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 gratuity 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, the delay per

se should not be the ground for rejection of the writ petition. No third party interest will be affected by a direction on the State to compensate the retired employee for delayed payment of gratuity by paying interest at a reasonable rate.

Having heard the learned counsel for the petitioner and having regard to the orders of this Court passed in other matters, 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 arrear pension amount calculated from 23.07.2011 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 5510 of 2021 is, accordingly, **disposed of**.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Rajasekhar Mantha, J.)