

07.09.2021
Sl. No.2
(PP)

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

WPA 7088 of 2021

Pradip Kumar Sarkar
Vs.
West Bengal Housing Board & Ors.

Mr. Arup Kumar Lahiri,
Mr. Udayan Datta
....for the petitioner.

Mr. Subhabrata Datta,
Mr. Debashis Sarkar
....for the respondent nos.1-4.

Ms. Anwari Quraishi,
Ms. Zainab Tahur
....for the State.

The petitioner was in employment of the respondent no.1 as a Group - 'D' staff since August, 1982. The petitioner has retired from service on 31st July, 2020. The petitioner while in service got yearly increment till 1st July, 2012. However, the yearly increment was stopped subsequent thereto. No document to withhold such increment has been produced by the respondent no.1 even before the office of the Principal Accountant General (G & SS Audit), West Bengal as will appear from a memo dated 9th August, 2019 of the Senior Auditor of such department (appearing at page 19 of the writ petition). The petitioner says that he has been paid the provident fund dues, gratuity and leave encashment

benefit by 24th December, 2020, but the same were computed on the basis of his salary without the increment. The petitioner says that his retiral benefits would be higher than what he has received if his salary with the increment was taken into account for the purpose of computation of such retiral benefits. The petitioner, therefor, prays for release of the arrears of increment and the difference in his retiral benefits between the amount actually paid and the amount computed by taking into account his salary with the increment.

On behalf of the respondent nos.1 to 4, it is submitted that the petitioner was accused of criminal acts and had been arrested twice. The criminal cases are still pending which entitles the respondent no.1 to withhold the increments. On a query from Court, it is submitted by the respondent nos.1 to 4 that the criminal cases are not in connection with the discharge of the petitioner's official duties while in service of respondent no.1. The fact remains that the respondent no.1 has neither suspended the petitioner nor initiated any disciplinary proceedings as against the petitioner for the criminal offences for which the petitioner is said to be accused, which the respondent no.1 could have done upon coming to learn about the petitioner's involvement in criminal case. The salary of the petitioner has also never been

withheld for any criminal offences said to be pending as against the petitioner.

In this factual backdrop and particularly in absence of any order or document, the increment payable to the petitioner on or after 1st July, 2012 could not have been withheld. The petitioner is, therefor, entitled to the increment with effect from 1st July, 2012 as per his service rules and conditions.

The respondent nos.1 to 4 are directed to pay the arrears of increment to which the petitioner was eligible from 1st July, 2012 till his retirement on 31st July, 2020 within a period of six weeks from the date of communication of this order. The arrear amount on account of increment shall carry a simple interest of 6% per annum to be paid with the principal sum. So far as the difference in the provident fund amount, gratuity and leave encashment is concerned, on the same being computed by taking into account the petitioner's salary between 1st July, 2012 till 31st July, 2020 to be with increments, the same shall computed and paid to the petitioner within a period of twelve weeks from the date of communication of this order. No interest is, however, allowed on the difference amount on account of provident fund, gratuity and leave encashment, if any, for the period between 1st November, 2020 and 24th December, 2020, keeping in mind that the petitioner had retired

from service on 31st July, 2020 and the retiral benefits had been paid by 24th December, 2020. However, the petitioner will be entitled to interest @ 6% per annum on the difference amount of provident fund, gratuity and leave encashment, if any, for the period between 1st July, 2012 and 31st October, 2020. This interest has to be also paid with the principal sum, if any, on this head.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Arindam Mukherjee, J.)