

IN THE HIGH COURT AT CALCUTTA
(Appellate Side)
CONSTITUTIONAL WRIT JURISDICTION

Reserved on: 06/01/2021

Pronounced on: 03/02/2021

W.P.S.T. 145 OF 2016

Sujoy Kumar Pal

.....Petitioner

Through:-
Mr. Rudra Jyoti Bhattacharjee,
Ms. Debjani Ghosal,
...Advocate, Present through VC

-Vs-

The State of West Bengal & Ors.

.....Opposite party

Through:-
Ms. Chaitali Bhattacharya,
...Advocate, Present through VC
Ms. Sukla Das Chanda,
... Advocate, Present in Court

Coram: **THE HON'BLE JUSTICE RAJESH BINDAL**
 AND
 THE HON'BLE JUSTICE ANIRUDDHA ROY

JUDGMENT

Rajesh Bindal, J.

1. The present petition has been filed challenging the order dated 27/11/2015 passed by the West Bengal Administrative Tribunal, Kolkata (for short 'the Tribunal') in O.A. No.997 of 2013.
2. The learned Counsel for the petitioner submitted that issue regarding fixation of pay and pension of the deceased Adwaita Kumar Pal has not been dealt with by the Tribunal in terms of which proper fixation of the last drawn pay and consequently the pension of the deceased employee was not made. It is further argued that the Tribunal has failed to grant interest on the amount of gratuity of ₹2,50,000/-, which was wrongly withheld by the respondents.

3. On the other hand, the learned Counsel for the respondents submitted that the issue regarding fixation of pay and family pension was not raised by the petitioner before the Tribunal, hence, seems to have been forgone. In fact, on account of excess payment to the deceased employee recovery of ₹2,50,000/- was required to be made and was partly made out of the gratuity payable to him. Recovery of excess payment made to the predecessor-in-interest of the petitioner has been set aside only in terms of the judgment of the Hon'ble the Supreme Court in ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.***, reported as **(2015) 4 SCC 334**. The only argument raised before the Tribunal was that recovery of the amount from the gratuity due to the predecessor-in-interest of the petitioner should not have been made and the amount already deducted be refunded. It was further submitted that the petitioner is not entitled to get any interest thereon as even the principal amount which, has been directed to be refunded is on account of equity.

4. Heard the learned counsels for the parties and perused the relevant referred record.

5. As far the first argument raised by the learned Counsel for the petitioner regarding correct fixation of the pay and consequently pension of the deceased employee is concerned, the issue was never raised before the Tribunal as the same is not part of the impugned order. While exercising its power of judicial review this Court would not like to venture on the issue which was not raised before the Tribunal. Validity of an order passed by the Tribunal Court cannot be examined on the issue not raised before it. It is not the case of the petitioner that any application was filed by him before the Tribunal raising the issue that the argument raised by him has not been noticed and considered.

6. As far the claim of interest on the amount of gratuity, out of which the excess paid amount of the deceased employee was partly recovered is concerned, in our opinion the petitioner is not entitled to receive the same. Non-recovery of the excess amount paid on account of various factors from an employee who has already retired or nearing retirement is on account of principle of equity and the

fact that he may not be able to pay the amount in lump sum if asked for at the time of retirement. It is not that he was entitled to receive that amount as a matter of right. Benefit of error committed at the end of the officials is given. Hence, to state that for any excess paid amount, which was recovered from the gratuity of the petitioner when refunded in terms of the order passed by the Tribunal, the petitioner should be awarded interest thereon will not be reasonable.

7. For the reasons mentioned above we do not find any merit in the present petition. The same is accordingly dismissed.

(RAJESH BINDAL)
JUDGE

(ANIRUDDHA ROY)
JUDGE

Kolkata

03/02/2021

PA(SG)