

Court No. 2

22.09.2021

(Sl. 65)

(ap)

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA 1231 of 2021

Passang Rai

Vs.

The State of West Bengal & Ors.
(Via Video Conference)

Mr. Deborshi Dhar

... for the petitioner

Mr. Subir Kumar Saha

Mr. Pretom Das.

... for the State Respondents

1. Affidavit of service filed in court today is kept with the record.

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

3. The petitioner's husband was appointed as an Assistant Teacher, who died in harness on 05.04.2011. The Pension Payment Order was issued on 19.11.2013. the grievance of the petitioner is that the arrear pension and gratuity amount was disbursed only on 01.02.2014. She claims interest on the delayed payment of the pension and gratuity amount.

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

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

6. 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 at in terms thereof does not apply to the 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 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, arrear 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 arrear upon retirement. If payment of such arrear is delayed, the retired employee is surely entitled to get some interest for such delayed payment.

7. 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 rights 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 arrear 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 employees. This is compensatory in nature. Pension and arrear 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 the retired employee to approach the Court claiming interest on delayed payment of arrear, 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 arrear by paying interest at a reasonable rate.

8. 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 Public Instructions, Government of West Bengal as also the concerned Account Officer to pay interest to the writ petitioner @ 8% per annum on the arrear family pension amount calculated from the next day of death of her husband of the petitioner till the date of actual payment.

9. Such payment is to be made within a period of eight weeks from the date of

communication of the certified copy of this order to the concerned authorities.

10. Since no affidavit-in-opposition has been invited, the allegations contained in the writ petition are deemed not to be admitted.

11. With these observations, the writ petition is disposed of.

12. There will be no order as to costs.

13. Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis.

(Rajasekhar Mantha, J.)