OD-3

WPO/856/2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SANTU GHOSAL & ORS.
Versus
THE STATE OF WEST BENGAL AND ORS.

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 24th September, 2021

(Via Video Conference)

Appearance:
Mr. Debdutta Basu, Adv.
...for the petitioner

Mr. Tapan Kumar Mukherjee, Sr. Adv., AGP
Mr. Somnath Naskar, Adv.
...for the State Respondents

Mr. Niladri Bhattacharyya, Adv.
Mr. Aditya Chaturvedi, Adv.
...for the WBTC

The Court : Affidavit of service filed in Court is taken on Record.

The petitioners are 18 in number. The petitioner nos.1 to 13 are retired employees and 14 to 18 are existing employees of Calcutta Tramway Company (1978) Ltd. now known as West Bengal Transport Corporation Limited. The Court fees paid is found to be sufficient. The petitioners claim interest on delayed payment of benefits under the Revision of Pay and Allowance Rules, 1998 (in short ROPA 1998) which is applicable to them. In terms of a circular issued by the Deputy Secretary, Transport

Department, Government of West Bengal dated 23rd June, 2000, the Employer made the following commitment:

> "(viii) Actual payment on the basis of fixation in the revised scales of pay will, however, be made with effect from 1.4.2000. The arrears for the period from 1.4.97 to 31.3.2000 will be paid in 5 annual installments, the first installment being payable not before 1.11.2002, along with interest to be calculated from 1.4.2000 at the same rate as admissible in respect of accumulation in the General Provident Fund Account."

Admittedly the payments were delayed and finally made only in the year 2008. The petitioners claim interest on the said arrears from the year 2000 till the year 2021 by filing this petition on or about 21st September, 2021.

Reference is made by counsel for the petitioner to decisions of Coordinate Benches of this Court in the case of The Calcutta Tram Mazdoor Sabha vs. State of West Bengal & Ors. in WP No.910 of 2006, being order dated 16th April, 2008; Suvra Kumar Dey & Ors. vs. The State of West Bengal & Ors. in WP No.1844 of 2008, order dated 17th February, 2009; order dated 2nd June, 2014 in WP No.514 of 2012, Debendra Nath Ghosh & Ors. vs. State of West Bengal & Ors. and a very recent order of 20th April, 2021 passed in WPO 175 of 2021. Claims similar to the petitioner but upto the year 2008 have been allowed in these cases. The respondents did not challenge the orders. In a contempt proceeding being CPAN 177 of 2020, arising out of WPA 20866 of 2019 by an order dated 24th November, 2020, the amount of interest paid till the year 2008 by the respondents to the petitioners therein was also duly recorded.

Learned Advocate appearing for the petitioners, places reliance upon a communication dated 24th June, 2015 issued by the Calcutta Tramways

Company to one Adinath Mukherjee, where the interest accrued from 2000 till 2013 has been set out in a chart. He also refers to a further communication received by one Sandip Panda for the same lines and refers to a cheque dated 6th August, 2015 for a sum of Rs.43, 750.27. He submits that the Tramways Company has admitted interest accrues in the GPF account from 2000 to 2012 and has paid the same to the said two petitioners in a compounded manner. He, therefore, claims interest on the interest unit 2021. He submits that the respondents have had user of the said money.

On behalf of the petitioners two judgments have been relied upon to demonstrate that delay in making an application for retiral benefits is not fatal. These judgments are (2008) 8 Supreme Court Cases 648 [Union of India & Ors. Vs. Tarsem Singh] and (2016) 13 Supreme Court Cases 797 [Asger Ibrahim Amin Vs. Life Insurance Corporation of India].

In **Union of India & Ors. Vs. Tarsem Singh** reported in **(2008) 8 Supreme Court Cases 648** at paragraph 7 it was stated as follows:

> "To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, 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. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

The said decision has been followed in the case of **Asger Ibrahim Amin Vs. Life Insurance Corporation of India** reported in **(2016) 13 Supreme Court Cases 797**. The relevant paragraphs are set out hereinbelow.

> "**4.** As regards the issue of delay in matters pertaining to claims of pension, it has already been opined by this Court in *Union of India* v. *Tarsem Singh* [*Union of India* v. *Tarsem Singh*, (2008) 8 SCC 648 : (2008) 2 SCC (L&S) 765] , that in cases of continuing or successive wrongs, delay and laches or limitation will not thwart the claim so long as the claim, if allowed, does not have any adverse repercussions on the settled third-party rights. This Court held : (SCC p. 651, para 7)
>
> > "*7.* To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. *For example, 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*. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."
> >
> > (emphasis supplied)
>
> We respectfully concur with these observations which if extrapolated or applied to the factual matrix of the present case would have the effect of restricting the claim for pension, if otherwise sustainable in law, to three years previous to when it was raised in a judicial forum. Such claims recur month to month and would not stand extinguished on the application of the laws of prescription, merely because the legal remedy pertaining to the time-barred part of it has become unavailable. This is too well entrenched in our jurisprudence, foreclosing any fresh consideration.
>
> **21.** We thus hold that the termination of services of the appellant, in essence, was voluntary retirement within the ambit of Rule 31 of the 1995 Pension Rules. The appellant is entitled for pension, provided he fulfils the condition of refunding of the entire amount of the Corporation's contribution to the provident fund along with interest accrued thereon as provided in the 1995 Pension Rules. <u>*Considering the huge delay, not explained by proper reasons, on the part of the appellant in approaching the Court, we limit the benefits of arrears of pension payable to the appellant to three years preceding the date of the petition filed before the High Court. These arrears of pension should be paid to the appellant in one instalment within four weeks from the date of refund of the entire amount payable by the appellant in accordance with the 1995 Pension Rules*</u>. In the alternative, the appellant may opt to get the amount of refund adjusted against the arrears of pension. In the latter

> case, if the amount of arrear is more than the amount of refund required, then the remaining amount shall be paid within two weeks from the date of such request made by the appellant. However, if the amount of arrears is less than the amount of refund required, then the pension shall be payable on monthly basis after the date on which the amount of refund is entirely adjusted."
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> (emphasis added)

The petitioners have also relied upon the judgment in S.K.Dua v. State of Haryana & Anr. reported in (2008) 3 SCC 44 wherein the Hon'ble Supreme Court has held that an employee had a right under Articles 14,19 and 21 of the Constitution of India to claim interest on delayed payment of retirement benefits. Relevant paragraph is quoted below:-

> "14. In the circumstances, *prima facie*, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14,19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of 'bounty' is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High court was not right in dismissing the petition in limine even without issuing notice to the respondents."

Counsel for the petitioner relied upon a communication dated 23rd June, 2000 issued by the Deputy Secretary, Government of West Bengal to the Chairman of the Calcutta Tramways Company. He refers to paragraph (viii) which prescribes that period of arrear is from 1st April, 1997 to 31st March, 2000.

It is further stipulated that the installments should be paid along with the interest to be calculated from 1st April, 2000 as admissible in respect of accumulation in General Provident Fund account. He therefore submits that the interest on the arrears must be calculated and paid for the entire period from the year 2000 till the year 2021.

The learned Advocate appearing for the State, submits that since the petitioners have admitted in their writ petition that sums of claim towards interest are not retiral dues, hence the decision in Tarsem Singh(supra) and Asger Ibrahim(supra) relied upon by the petitioner has no manner of application. In fact the claim has to be rejected in view of Asger Ibrahim(supra). It is also submitted that interest on arrear salary paid in the year 2008 could not have been claimed beyond three years and hence the claim of the petitioners is hopelessly barred by limitation and stale.

It follows from the above that all pensionary claims and retirement benefits are not hit by delay and laches. The principal reason being that such delay and laches do not affect any third party rights.

The claims of interest on the delayed payment of benefits under ROPA 1998 must also be viewed in similar lines. The same is a benefit of service. The delay in claiming the interest on the delayed payment of ROPA 2000 is not likely to prejudice any third party. The respondent authorities cannot be deemed to have altered any position. There can be no estoppel against the petitioner's claim.

Upon considering Tarsem Singh(supra) and Asger Ibrahim(supra), I also do not find the petitioners are disentitled to make the claim for interest in delayed payment even though they have approached this Court in 2021 since it is a continuing cause as held in Asger Ibrahim(supra).

Counsel for the respondent relies upon a decision rendered by this Court dated 13th January, 2020 in the case of **Prabir Kumar Mitra vs. State of West Bengal & Ors.** being **WPA 0026581 of 2013** being order dated 13th January, 2020. It is submitted that similar claim for interest which was delayed has been rejected by this Court. This Court notices that in the said **Prabir Kumar Mitra (Supra)** decision the writ petitioner therein had approached this Court on two earlier occasions and yet chose not to raise any claim on the issue of interest. It is in that context that the said claim was rejected. Since the facts of the said case are substantially different from the instant case, the said decision cannot come to the aid of the respondents.

This Court is unable to accept the said submission since admittedly the petitioners have been paid interest along with the arrears with a delay of only one year i.e. the 5th instalment being payable by 2007 was actually paid in the year 2008. The petitioners would therefore be entitled to interest for delayed payment on the installment on the arrears for the period from 1st April, 1997 to 31st February, 2000, from 31st March, 2000 to 2008. The petitioner has approached this Court only in the year 2021. Had he filed the proceedings in 2008 he would have got interest only for one year. The petitioner cannot be allowed to take advantage of his own wrong. That apart and in any event the grounds of rejection of claim in Asger Ibrahim(supra) also does not permit allowing of intent till 2021.

I have no reason to differ with the view taken by the Co-ordinate benches in the matters referred to above.

However, while awarding interest on delayed payment of service benefits, due regard must be had to financial condition of the employer. Reference is also made to the case of **State of Andhra Pradesh and Another Vs. Dinavahi Lakshmi Kameswari** reported in **2021 SCC OnLine SC 237**. The relevant paragraphs of the said decision are set out hereinbelow

> "**15.** The direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. Likewise, it is well settled that the payment of pension is for years of past service rendered by the pensioners to the State. Pensions are hence a matter of a rightful entitlement recognised by the applicable rules and regulations which govern the service of the employees of the State. The State Government has complied with the directions of this Court for the payment of the outstanding dues in two tranches. Insofar as the interest is concerned, we are of the view that the rate of 12% per annum which has been fixed by the High Court should be suitably scaled down. <u>While learned counsel for the respondents submits that the award of interest was on account of the action of the Government which was contrary to law, we are of the view that the payment of interest cannot be used as a means to penalize the State Government. There can be no gainsaying the fact that the Government which has delayed the payment of salaries and pensions should be directed to pay interest at an appropriate rate.</u>
>
> **16.** We accordingly order and direct that in substitution of the interest rate of 12% per annum which has been awarded by the High Court, the Government of Andhra Pradesh shall pay simple interest computed at the rate of 6% per annum on account of deferred salaries and pensions within a period of thirty days from today. This direction shall, however in the facts and circumstances, be confined to categories 3, 4, 5 and 6 of GOMs No. 26 dated 31 March 2020. We clarify that interest shall be paid to all pensioners of the State at the rate of 6% per annum on the deferred portion, for the period of delay. Having regard to the prevailing bank interest, the rate of 12% per annum which has been fixed by the High Court, would need to be and is accordingly reduced."
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> (emphasis added)

For the reasons stated hereinabove, the writ petition is allowed. The respondents shall pay interest from the year 2000 till the year 2008 or the date of actual payment of such arrears, less any interest already paid, at the rate of 7% per annum to the petitioners within a period of two months from the date of communication of a copy of this order.

In default of payment of the aforesaid interest within a period of two months, the rate of interest shall increase to 8 per cent. Although an employee of a Government company/State corporations/statutory corporations are different from Government employees and the liability of Central/State Government is limited as per the policy yet in view of the commitment from the State Government in the communication dated 23rd

June, 2000 the State Government shall ensure appropriate funds to the WBTC to comply with the aforesaid order.

With the aforesaid observations, the writ petition is disposed of.

There shall be no order as to costs.

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

(ARINDAM MUKHERJEE, J.)

B.Pal