In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Lapita Banerji

W.P.A. NO.3039 of 2017

Sri Tarun Bandopadhyay
Vs.
The State of West Bengal and Ors.

For the Petitioner	: Mr. Prosenjit Mukherjee, Mr. Arghya Kamal Das
For the Respondent No.3	: Mr. Achyut Basu, Mr. Somen Bose, Ms. Sonam Basu, Ms. Punam Basu,
Hearing concluded on	: 29th July, 2022
Judgment on	: 26th August, 2022

1. **Lapita Banerji, J.:-** The petitioner's grievance in this Writ Petition being W.P.A. No. 3039 of 2017 arises out of the failure on the part of the respondent No.3/the Principal of Berhampore College to process the documents necessary for payment of retiral benefits of the writ petitioner. The failure on the part of the Principal to send the entire documents along with the service book to the respondent No.4/the Director of Pension, Provident Fund and Group Insurance for release of pensionary benefits.

2. The facts in the Writ Petition are as follows:

(a) The petitioner retired as an Assistant Professor of Mathematics from Berhampore College on January 31, 2016. He has continuously rendered his service from January 4, 1982.

(b) Despite rendering 34 years of continuous satisfactory service, his post-retirement benefits were withheld, due to the conduct/action on the part of the respondent No.3/the Principal.

(c) After waiting for a long period, on September 6, 2016, the petitioner wrote to the respondent No.2/the Director of Public Instructions (DPI) Higher Education Department for release of the retirement benefits of the petitioner.

(d) In reply to the letter, to the DPI (Supra) the respondent No.3/Principal by a purported communication dated September 23, 2016 vide DC/126/2016-17 informed the petitioner that despite several requests to submit the accounts of the Directorate Of Distance Learning (DODL), Kalyani University, the petitioner did not submit the same. The petitioner was one of the Coordinators of DODL, Behrampore College since the initiation of the course. According to the respondent No.3, the petitioner should have cleared all its liabilities before his retirement.

(e) Immediately, upon receipt of the purported communication, (Supra) the petitioner by a letter dated October 5, 2016, replied to the same. It would be evident from the said communication, that since 2011-12 the petitioner was not a Member of the DODL Committee any more. He was also never the Treasurer of the same. It was the respondent No.3/Principal who was the Chairman of the said Committee from the very beginning till the date of the letter. The petitioner was never ever called upon to give any accounts as the same was to be maintained by the Chairman/respondent No.3 and not the petitioner. Unfortunately, for reasons best known to the respondent No.3, the petitioner's service book was not released even after 9 months of his retirement. As a result thereof, the petitioner neither received his pension nor provident fund nor gratuity nor leave encashment.

(f) No reply was given to the petitioner to his letter dated October 5, 2016.

(g) The petitioner had no alternative but to file the instant Writ Petition on February 6, 2017.

3. When the Writ Petition came up for hearing, it was noted by the Hon'ble Coordinate Bench that despite Affidavit of Service no one represented the respondent No.3 nor the College in issue on several dates. The State respondent was represented and filed written instructions on behalf of the State Authority pursuant to as earlier Order of the Court dated February 22, 2017. From the said written instructions, it would be evident that the petitioner retired on January 31, 2016. The petitioner sent a letter to the respondent No.2 on January 9, 2017 requesting release of his pensionary benefits. Upon receipt of the letter, the Respondent No.2 immediately sent a letter dated February 2, 2017 vide Memo No.136/C/Pen to the respondent No.3/Principal requesting him to furnish the pension papers of the petitioner at an early date. Respondent No.3 was also required to provide valid reasons as to why the pension papers were not submitted 8 months prior to the petitioner's retirement in terms of D.P.I.'s Circular No.1050-C-Pen dated July 22, 2016 and also why he would not be held responsible to pay interest on the delayed payment of gratuity etc.

4. Upon receipt of such instructions, the respondent No.3 vide a covering letter dated February 20, 2017 submitted the service book of

the petitioner along with the necessary documents to the respondent No.2. Interestingly, no reason was provided as to why the Principal/respondent No.3 withheld the pensionary documents of the writ petitioner. Furthermore, Respondent No. 3 failed to give any cogent reason as to why interest should not be charged for delayed payment of gratuity etc.

5. The said papers were received by the concerned Section of the respondent No.2's office on March 7, 2017. On examination of the papers submitted by the College Authorities/respondent No.3, the respondent No.2 submitted the same vide Memo No.341-C-PCN dated April 10, 2017 on April 13, 2017 to the Office of the Accountant General, West Bengal for taking necessary action.

6. On April 24, 2017 the Hon'ble Coordinate Bench agreed with the submissions made by the Learned Counsel appearing on behalf of the State and held that there was no intentional delay/laches on the part of the State Authorities in processing the pension papers of the petitioner. The Court directed the respondent No.4/Director of Pension as well as the Accountant General, West Bengal to take expeditious steps but not later than 4 weeks from the date of the communication of the Order for releasing of the arrears and regular pensionary benefits to the petitioner. Furthermore, given the conduct of the respondent No.3, the Hon'ble Coordinate Bench directed the Accountant General and the respondent No.4 to deduct half of the net

salary of the respondent No.3/Principal of the College in issue for the month of May, 2017 and pay in favour of the petitioner towards compensation and costs. Leave was given to the petitioner to add the Accountant General as a party respondent.

7. The respondent No.3 challenged the said Order of the Hon'ble Coordinate Bench dated April 24, 2017 in an Intra Court Appeal being MAT 976 of 2017. In the said Appeal the direction for deduction of half of the net salary of the respondent No.3 was set aside since he was not invited to explain his stand by way of an affidavit. The appellant was given an opportunity to file an affidavit before the Single Bench. The Appeal was disposed of with the following directions:

> *"The writ petition shall be considered afresh by the regular Bench on the limited point as to whether the appellant was at fault for not processing and furnishing the pension papers to the appropriate authorities so as to facilitate disbursal of pension immediately after the respondent no.1 retired.*
>
> *Since we are remitting the matter back to the learned Judge, it would also be appropriate to request the learned Judge to consider the question of payment of leave encashment benefits, if at all admissible to the respondent no.1. The reason for this request is that the respondent no. 1 in the writ petition had prayed for 'entire retirement benefits' which would also obviously include leave encashment benefits, if at all the same were admissible, but in respect thereof no direction was made."*

8. The Writ Petition being W.P.A No. 3039 of 2017 was heard by this Bench on several dates and the same was considered along with the affidavits filed by the parties.

9. Mr. Mukherjee, Learned Counsel appearing for the petitioner, submitted that there was no valid reason for delayed processing of the retiral benefits of the petitioner. He argued that, with *mala fide* intent the retiral dues were withheld by the respondent No.3.

10. Pursuant to the previous Order dated April 24, 2017, retiral benefits were disbursed except the leave encashment benefits and the amount awarded as compensation/costs.

11. He submitted that as per the Government guidelines of Death-cum-Retirement Benefit (DCRB) scheme for West Bengal Non-Government College Teachers, it was incumbent that the pension papers along with all the documents mentioned should be submitted to the Pension Sanctioning Authority i.e. the Director of Public Instructions/respondent No.2, three months prior to the actual retirement of the employee concerned, for sanction of the pensionary benefits. The respondent No.3 has acted in clear violation of the said guidelines without any valid/legitimate reason. It was only on September 23, 2016, more than 9 months after the retirement of the petitioner and that too in reply to the petitioner's request dated September 6, 2016 for release of the pensionary benefits, he was intimated that due to some purported failure to provide accounts

during his tenure in the DODL Committee, his pension papers were not processed. Such a stand of the respondent No.3 was arbitrary, illegal and taken with *mala fide* intent and was also in colorable exercise of power. Furthermore, despite Order of the Coordinate Bench passed on April 24, 2017, the respondent No.3 issued a "No Liability Certificate" as late as October 18, 2017.

12. Mr. Mukherjee on behalf of his client prayed for the leave encashment benefits along with 10% interest for delayed payment of gratuity, leave encashment and other retiral benefits along with the compensation allowed by the Hon'ble Single Bench in terms of the Order dated April 24, 2017.

13. Mr. Basu, appearing for the respondents, vehemently argued that the only question that can be considered by this Bench at present relates to leave encashment benefits to the petitioner. The issue with regard to costs/compensation to the petitioner was already settled by the Hon'ble Division Bench. Since the Hon'ble Division Bench had set aside the part of the Order dated April 24, 2017 relating to compensation/costs, the same was not open for adjudication before this Court.

14. Mr. Basu reiterated the stand taken in the Affidavit-in-Opposition and argued that since the petitioner was a part of the DODL Committee since its inception at the College in issue, he was liable to submit the accounts for the same before his retirement. Several requests were

made to him for rendition of such accounts but despite such requests the petitioner failed to submit the accounts before his retirement.

15. Having considered the rival submissions of the parties and materials on record, this Court finds that:

(i) The writ petitioner has rendered 34 years of uninterrupted service as an Associate Professor of the College-in-issue, till his retirement on January 31, 2016.

(ii) No disciplinary proceeding was pending against the writ petitioner at the time of his retirement nor was any evidence produced in respect of unsatisfactory performance on the part of the writ petitioner.

(iii) There is nothing on record to show that any request was made to the petitioner for rendition of accounts as a DODL Committee Member prior to the purported written communication dated September 23, 2016.

(iv) There is no denial in the Affidavit-in-Opposition affirmed by the respondent No.3/Principal on December 18, 2017 to the statement regarding the fact that the petitioner was released from the Committee since 2011-12 and has not been a part of the same till his retirement on January 31, 2016. There is also no denial of the fact the respondent No.3 was a Chairman of the said Committee at all material points in time and it was the primary responsibility of the respondent No.3 to be in-charge of the accounts and provide for the same.

(v) It is not lost upon this court that in suppression of the fact that the writ petitioner ceased to be a member of the DODL Committee since 2011-2012, allegations were raised against him regarding his purported liability to furnish the accounts in respect of the DODL Committee. Furthermore, no statement was also made regarding the respondent No. 3 himself being the Chairman of Committee till the petitioner's date of retirement. Not even one document was produced whereby the respondent No.3 or the college authorities asked the petitioner to provide for the purported accounts prior to the date of his retirement.

(vi) This court has no hesitation to hold that the allegation regarding the purported liability of the writ petitioner is arbitrary and smacks of malafide intention to harasse the writ petitioner/retired professor from getting his post retiral benefits.

(vii) The statements regarding several requests being made by the respondent No.3 to the petitioner for providing the accounts are only bald assertions and not even a single corroborative document has been provided for the same.

(viii) The respondent No.3 by its written communication dated February 3, 2017 released the service book of the petitioner along with necessary documents to the D.P.I. He failed to provide any explanation regarding the withholding of the necessary documents along with the service book for release of the pensionary benefits of the petitioner.

(ix) There was no explanation at all given by the respondent No.3 to the queries raised by the respondent No.2 by its Memo dated February 8, 2017 regarding the non-submission of papers eight months prior to the retirement of the writ petitioner along with the issue of payment of interest to him.

(x) All the issues raised by the respondent No.2 against the respondent No.3/Principal remained uncontroverted.

16. In the light of the discussions above, this Court holds that the Hon'ble Division Bench clearly directed the Regular Bench to consider the

limited point as to whether the appellant/Principal was at fault for not processing and furnishing pension papers to the Appropriate Authorities to facilitate disbursal of pension of the respondent No.1/writ petitioner/retired Professor.

17. This Court is also of the view that the Order dated April 24, 2017 merits no interference and the Accountant General/respondent No.5 along with respondent No.4 shall pay half of the net salary of the respondent No.3/Principal of the College in issue for the month of May, 2017 in favour of the petitioner towards compensation and costs.

18. Since the respondent No.3 has no issues regarding the processing of the leave encashment benefits of the petitioner, I direct the petitioner to submit a calculation of leave encashment benefits to the College Authorities/respondent No.3 immediately. The respondent No.3 will take necessary steps for approval of the same but not later than 2 weeks from the date of submission of the same and forward to respondent Nos.4 and 5 for necessary disbursement. I find that the petitioner is also entitled to interest for belated processing and furnishing of his pension papers in violation of the DCRB guidelines (Supra) as discussed hereinabove, without any legally tenable reason. The petitioner is entitled to 8% interest on the delayed payment of gratuity and other pensionary benefits from the date of accrual till the

date of actual payment of the same, keeping in mind the fact that he is senior citizen, as further compensation to the petitioner. The calculation of the same will be provided by the petitioner to the Respondent No.3. Half the net salary that was directed to be deducted for the month of May 2017 will be included in the said calculation for further compensation.

19. The said compensation will be paid by the respondent No.3 within a period of 4 weeks from the date of the communication of this order. In the event there is any default in payment of such interest, the same will be deducted from the monthly salary of September, 2022 payable to him by the respondent Nos.4 and 5 or the super-annuation benefits as may be applicable.

20. From the Written Notes of Submission made on behalf of the respondent No.3, I find that a point has been sought to be raised regarding the integrity or appropriateness of this Court in adjudicating the Writ Petition being W.P.A. No.3039 of 2017 since this Bench is at present also sitting in Division Bench presided over by the same Judge who passed the Order dated April 24, 2017 while sitting in a coordinate jurisdiction.

21. The last point in the written notes of submission submitted by the respondent of 3 reads as thus:

> *"The Hon'ble single Bench presided over by the Hon'ble Justice Subrata Talukdar had passed the order dated 17.04.2017*(correctly read as 24.04.2017) *awarding costs and compensation to the petitioner which was set aside by the Hon'ble Division Bench by its order dated 24.11.2017. Thereafter, your Lordship is now sitting with the Hon'ble Justice Subrata Talukdar."*

22. Such an issue was never raised before this Bench when the matter was taken up for hearing and heard on various occasions.

23. After wasting precious judicial time this issue has been sought to be raised by the respondent No.3 in its Written Notes of Submission. Such a sharp practice is deprecated by this Bench.

24. This Court awards an additional cost of Rs.10,000/- to be paid by the respondent No.3 to the High Court's Law Clerks Association within a period of 4 weeks from date. In the event there is any default in payment of such costs, the same will be deducted from the monthly salary payable to the respondent No.3 for the month of September, 2022 by the respondent Nos.4 and 5 of the super-annuation benefits and forwarded to the **Registry** of this Hon'ble Court for handing over the same to the aforesaid Association.

25. With the aforesaid directions, the **Writ Petition** being **WPA No. 3039 of 2017** is **disposed** of.

26. All parties to act on a server copy of this Order as laid down from the official website of this Hon'ble Court.

27. An urgent Xeroxed certified copy, if applied for, be made over to the parties upon completion of all the requisite formalities.

(Lapita Banerji, J.)