

08.04.2022

Court : 04
Item : PB-13
Matter : MAT
Status : DO
Transcriber: nandy

MAT 418 of 2022

with

CAN 1 of 2022

Shyamali Maity

Vs.

The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharya, Advocate

Mr. Surendra Kumar Sharma, Advocate

.....for the Appellant

Mr. Biswabrata Basu Mullick, Advocate

Mr. Sayan Ganguly, Advocate

.....for the State

The writ-petition filed by the petitioner seeking family pension under DCRB Scheme, 1981 as amended and/or extended from time to time, was dismissed on the ground of delay in perusing the claim. The order impugned runs thus:-

“This is a petition claiming family pension of the daughter of the deceased teacher who retired from his service in 1974 and expired in 2000. Thereafter, the petitioner’s mother was getting family pension and her mother expired in 2013. This writ application has been filed in 2017.

I do not entertain this writ application for making delay for filing this writ application after four years from the date of death of the mother of the petitioner.

The writ application is dismissed. The application being CAN 1 of 2022 is also dismissed.”

Admittedly, the father of the appellant was appointed as Assistant Teacher with effect from April 1, 1960 and attained superannuation on December 3, 1974. After retirement, the father of the appellant not only received the retiral benefits admissible to his service but also received the pension in terms of the relevant provisions applicable in this regard. The said

retired employee died on August 16, 2000 and the mother of the appellant was extended and/or granted family pension with effect from August 17, 2000 till she breathed last on February 24, 2013.

The appellant being the unmarried daughter and physically disabled applied for family pension. It is stated in the petition that immediately an application was taken out in the year 2013 which was forwarded by the competent authority to the District Inspector of Schools (Secondary Education), Purba Medinipur who in turn forwarded all the necessary papers pertaining to the claim of the appellant to the Director of Pension, Provident Fund and Group Insurance, West Bengal for further action to be taken thereupon.

The appellant did not receive any response thereafter and was constrained to take out an application under Right to Information Act, 2005 on April 8, 2015. The information was subsequently divulged to the petitioner on April 16, 2015 communicating that as per the available record the pension case was received in the office of the Joint Director Accounts (SE), Purba Medinipur on December 26, 2013 and the same as returned to the D.I. of Schools (SE), Purba Medinipur on December 30, 2013 with affirmative note regarding issue of family pension in favour of the appellant. It is further indicated that the said Department is neither the pension sanctioning authority nor Pension Payment

Order issuing authority and, therefore, showed their inability to divulge the reasons for not sanctioning the pension.

Obviously, the right to claim accrued on disclosure of the facts on the basis of the aforesaid communication made on April 16, 2015. It further appears that subsequently a representation was made in the year 2015 and again in the year 2017 and, thereafter the writ-petition came to be filed before this Court.

Right to approach the Court accrues on denial of a claim and not when the claim remains undecided. Though it is contended by the writ-petitioner that several recommendations were made and in fact, the application was processed and the denial has not been communicated, yet we find that the moment the information is disclosed under the Right to Information Act, 2005, there is no impediment on the part of the petitioner to approach the Court on such disclosure of the facts. Though the Limitation Act does not apply to the writ proceedings yet time and again stale claims made after a gap of considerable period are not entertained on the ground of delay and laches except when the claim is founded on infringement/violation of fundamental rights guaranteed under the Constitution. If the suit before the civil Court in respect of the right so accrued where specific period of limitation provided therefor under the Limitation Act, can be filed within

three years from the date of accrual of the cause of action, we do not find any justification in not adopting the same analogy in a writ-petition if taken out within three years from the date of accrual of cause of action.

Since the instant writ-petition was taken out within a span of two years from the date of accrual of the cause of action, there is no justification in dismissing the suit on the ground on delay and laches.

The order impugned is **set aside**.

The matter is remitted to the single Bench to decide the same on merit.

Nothing observed hereinabvoe shall have any persuasive effect on the merit of the said case as this Court has no occasion to go into those aspect.

With these observations, the appeal being **MAT 418 of 2022** and the application being **CAN 1 of 2022** are **disposed of**.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

