

11.05.2022
Ct. 5
D/L 12
ab

WPA 5444 of 2022

Nirmala Ghosh

-Vs-

The State of West Bengal & Ors.

Mr. Sourav Mitra,
Ms. Sreyasree Choudhury

... for the petitioner

Mr. Gourav Das,
Mr. Debapriya Chatterjee,

... for the State

The petitioner has filed an affidavit pursuant to a direction of the Court explaining the reasons for the delay in filing the writ petition.

Learned counsel appearing for the State takes an objection on the ground of delay to the relief being granted to the petitioner. Learned counsel refers to a decision of the learned Single Judge, as His Lordship then was, in *Pranesh Chandra Debnath Vs. The State of West Bengal*, where the Court relied on *State of M.P. Vs. Bhailal Bhai*, reported in *AIR 1964 SC 1006* where it was held that the special remedy under Article 226 of the Constitution is not intended to completely supersede the modes of obtaining relief by an action in a Civil Court. Counsel also refers to an unreported Supreme Court decision in *Civil Appeal No. 5239 of*

2002 (*Dalip Singh Vs. State of U. P.*) where the Supreme Court commented on the effect of suppression of material facts.

After considering the submissions and taking into account the decisions on the subject of grant of relief for post-retirement and other benefits by a writ Court in *Union of India Vs. Tarsem Singh*, reported in (2008) 8 SCC 648, this Court is of the view that the petitioner cannot be denied the relief on the ground of delay alone. This aspect was also taken into consideration by the judgment pronounced by this Court in WPA 6649(W) of 2019 (*Padma Nath Vs. State of West Bengal*) where it was held that the right of a writ petitioner to get his/her retiral dues on the date of attaining superannuation is a valuable right and a legal duty is cast upon the concerned authorities to ensure that such right is not defeated, particularly, where the prayer is for interest towards delayed payment of gratuity as well as arrear pension.

The facts of the case as would appear are as follows:-

The husband of the petitioner was a Darwan of Pingla Thana Mahavidyalay who retired from service on 30th April, 2001. The husband of the petitioner died on 6th January, 2006. The petitioner had completed all pension-related formalities. However, the concerned authorities

delayed and released the gratuity as well as arrear pension on 12th August, 2003. The petitioner herein seeks interest to be paid for the interim period of delay in receipt of the gratuity amount. There is a considerable delay in filing of the writ petition, which the petitioner seeks to justify by stating that there is no statutory period of limitation and neither parties have suffered due to this delay. It is the submission of the petitioner that accordingly the petition should be allowed. The petitioner relies upon an order in *W.P. 17557(W) of 2017 (Narayan Chandra Saha Vs. State of West Bengal & Ors.)* wherein a co-ordinate bench had relied upon the Supreme Court judgement in the case of *Union of India Vs. Tarsem Singh*, reported in (2008) 8 SCC 648 on the issue of limitation relating to payment or refixation of pay or pension wherein the Apex Court had held that relief may be granted inspite of delay as it does not affect the right of the third party.

In view of the above and after hearing the learned counsel for the parties, I direct the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal as also the concerned Treasury Officer to pay interest to the petitioner @ 8% per annum on the

gratuity as well as arrear pension amount calculated from 1st May, 2001 till the date of payment. Such payment is to be made within a period of eight weeks from the date of communication of this order.

WPA 5444 of 2022 is accordingly disposed of without, however, any order as to costs.

(**Moushumi Bhattacharya, J.**)