

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 9196 of 2021

Nirod Baran Mondal
Vs
State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Sourav Mitra, Adv. Ms. Sreyasree Choudhury, Adv.
For the State	:-	Mr. Amal Kumar Sen, Adv. Mr. Supriyo Chattopadhyay, Adv. Mr. L. M. Basu, Adv.
Heard on	:-	22.02.2022
Judgment on	:-	25.03.2022

Amrita Sinha, J.:-

The petitioner, a primary school teacher, retired from service on attaining the normal age of superannuation on 31st January, 2019. Petitioner claims that the pension booklet was filled up and submitted before the respondent authority long prior to the date of retirement. It has been claimed that the petitioner discharged all obligation in time to receive the pensionary benefit immediately after retirement. First Pension Payment Order was issued in favour of the petitioner immediately after retirement and pension was disbursed thereafter.

Revised Pension Payment Order was issued on 9th February, 2021 and the balance gratuity and arrear pension amount in terms of the Revision of Pay and Allowances, 2019 was credited to the petitioner on 12th February, 2021.

Petitioner submits that financial benefit under ROPA 2019 ought to have been disbursed on and from 1st January, 2020 i.e. the date from which ROPA 2019 became effective, actually. Petitioner claims interest on account of delayed payment of revised gratuity and revised arrear pension in accordance with ROPA 2019.

The petitioner has relied upon a judgment delivered by a coordinate Bench of this Court on 21st August, 2015 in **WP 1848 (W) of 2015 (Jagadish Chandra Bhunia –vs- State of West Bengal & Ors.)** wherein the Court was considering the issue whether interest is payable on delayed payment of gratuity and held that the same was payable.

The prayer for grant of interest has been vehemently opposed by the learned advocate representing the State respondents. It has been submitted that time is required for the respondent authorities for making necessary calculation for giving effect to the revision. It has been contended that revision is made only upon receiving option from the incumbent through proper channel seeking revision. Time is required for verification of documents and making the necessary calculation.

It has been submitted that the modified procedure for application, process and disposal of pension cases as indicated in the Memo No. 62-SSE/17 dated 17th April, 2017 issued by the School Education Department, Audit Branch is to be meticulously followed prior to disbursement of the revised pension and gratuity amount.

The respondents have specially stressed upon compliance of all formalities as mentioned in Memo No. 437-SE (P & B)/SL/5S-408/19 dated 13th December, 2019. It has been submitted that there is a provision for exercising option in a specified format within a specified time. If the incumbent fails to submit the option within the prescribed time the respondent authority ought not to be taken to task.

It has been argued that there are instances where delay has occurred because of lapse on the part of the teacher and not for any fault of the respondent authority.

Learned advocate for the State has placed reliance upon an order passed by the Hon'ble Supreme Court in the matter of **State of Uttar Pradesh & Ors. –vs- Ishrar Ahmed & Ors.** reported in **(2018) 2 SCC 672** wherein the Court

was of the view that there was no justification for granting interest on the revised pay scale.

Respondents pray for dismissal of the writ petition.

I have heard and considered the rival submissions made on behalf of both the parties.

Over a period of time it has been persistently laid down by the Court that pension and gratuity are not bounty and are considered as valuable rights in the hands of the retired employees. The Courts on repeated occasions have held that retiral dues are to be disbursed immediately upon retirement and in the event there is any delay in disbursing the same, then the pensioner is entitled to interest.

The primary ground highlighted by the respondent authorities in not disbursing the revised Pension Payment Order on time is that, time was required for processing and making calculation.

The Government of West Bengal, School Education Department, Planning and Budget Branch, by a Memo bearing no. 437/SE(P & B)/SL/5S-408/19 dated 13th December, 2019 published the West Bengal Recognized non-Government Aided Educational Institutions Employees (Revision of Pay and Allowances), 2019 in the official gazette on 13th December, 2019. The revision was notionally effective from 1st January, 2016 with actual financial effect from 1st January, 2020. The said revision was made in accordance with the recommendation of the 6th Pay Commission. The Memo is applicable to those employees holding substantive/officiating post as on 1st January, 2016 and whose pay and allowance are borne by the Government of West Bengal in School Education Department.

According to paragraph 6 of the said Memo dated 13th December, 2019, an option is required to be filed by the incumbent in a prescribed format within three months from the date of publication of the memo. Paragraph 6(3) of the Memo mentions that, if option is not received by the Head of the Institute/Head

of Office within the specified time, the employee shall be deemed to have elected to be governed by the revised pay structure with effect from 1st January, 2016. Paragraph 6(4) mentions that the option once exercised shall be final. According to paragraph 5 of the aforesaid Memo an employee shall draw pay in the level in the revised pay structure applicable to the post which he is holding as on 1st January, 2016.

An employee may elect to continue to draw pay in the existing pay structure. Only if the employee elects to continue to draw pay in the existing pay structure, then only the question of exercising option according to paragraph 6(1) arises. If the employee does not intend to draw pay in the existing pay structure, then as per the Memo, revised pay structure will be deemed to be applicable. The same is clearly mentioned in paragraph 6(3) of the aforesaid memo, wherein it has been indicated that, if option is not received within the specified time it shall be deemed that the employee elected to be governed by the revised pay structure with effect from 1st January, 2016.

The submission of the State respondents that calculation of the last pay drawn depends upon the option exercised by the employee is, accordingly, not correct. In the absence of an option filed by the incumbent, the revision is automatic. There is absolutely no role of the employee. It is for the respondent to apply ROPA and disburse the benefit on time relying on the data that is already available with the authority.

The Court in Jagadish Chandra Bhunia (supra) was pleased to hold that the contention of the Government Pleader that, the State requires some time to implement ROPA is without any substance. The State being aware of the consequences of ROPA has given effect thereto on and from a particular date. The State cannot now be allowed to contend that it requires time to react to ROPA. The delay between the date of issuance of the revised Pension Payment Order and the disbursement thereof cannot be justified under any circumstances. The Court was pleased to direct payment of interest on and from the date the ROPA came into effect till the date of disbursement.

In the present case, ROPA 2019 has been given effect notionally from 1st January, 2016 with actual financial effect from 1st January, 2020. A further memo was published on 14th February, 2020 in modification of the notification published on 13th December, 2019 wherein it has been clearly mentioned that the order shall take immediate effect. The memo dated 14th February, 2020 was issued with the concurrence of the Finance Department.

As the contention of the State seeking time for giving effect to ROPA 2009 has not been accepted by the Court on an earlier occasion, accordingly, there is no reason to accept the same contention for giving effect to and for implementation of ROPA 2019.

In *Ishrar Ahmed (supra)* the Hon'ble Supreme Court was pleased not to lay down any law. The Court, on the facts and circumstances of the said case, was of the view that there was no justification for granting interest on revised pay scale. The said direction appears to have been passed under Article 142 of the Constitution and the same does not appear to be applicable in the facts and circumstances of the present case.

The State ought not to support the delay in making payment at all. The State Government is providing all facilities to the departments for smooth and prompt functioning. Service data of all employees are stored and managed by computers. Calculations are made by click of a key. Manual intervention is reduced to minimal. There is no plausible reason for not providing timely service to the citizens when all the required facilities are available. In case there is any loop hole which is standing in the way of delivering prompt and timely service, then the same should be identified and plugged immediately. Time should not be sought for delaying the matter further, otherwise the State can never rise to the occasion and keep on paying interest to compensate the delay. The same is bound to drain the State exchequer. It is high time that the functionaries of the State to adopt measures to ensure that the benefit provided by the State actually passes on to the beneficiaries in proper time so that there is no compulsion to approach Court for relief. Person(s) standing in

the way of timely delivery of Government service ought to be dealt with appropriately in the interest of the general public.

In view of the above, it is held that the petitioner will be entitled to receive interest on account of delayed payment of dues in accordance with ROPA 2019 on and from 14th February, 2020 till the date of actual payment. Keeping in mind the submission made on behalf of the State respondents that it will be a financial burden upon the cash strapped State to pay interest to so many pensioners, accordingly the rate of interest is fixed at 5% per annum. The aforesaid payment shall be disbursed by the concerned Treasury Officer within a period of eight weeks from the date of communication of this order.

Writ petition stands disposed of.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)