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11.01.2022
Ct. No.23
(NB)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 9370 of 2021
(via Video Conference)

Maya Das
Vs.
The State of West Bengal & Ors.

Mr. Mrinal Kanti Ghosh
... for the petitioner.

Mr. Arjun Samanta.
...for the respondents.

The petitioner's husband was in service under the District Judgeship at Howrah and retired from service on 30th September, 2008 on attaining the age of superannuation.

The petitioner says that the pay and allowance of the petitioner's late husband was revised under the Revision of Pay and Allowances (in short "ROPA"), 2009. The petitioner is claiming the arrears on account of revision of pay and allowances for the period between 1st April 2003 and 30th September, 2008 and from August, 2009 till November, 2010 as also an amount on account of leave salary.

The husband of the petitioner had filed a previous writ petition which was ultimately dismissed on 9th February, 2018. The petitioner has thereafter, made a representation to the learned District Judge, Howrah on

22nd February, 2021. The petitioner's husband admittedly approached this Court at a belated stage to claim his entitlement, if any. The said petition was ultimately dismissed. The petitioner submits that the writ petition filed by the petitioner's husband was not dismissed on merit and as such the petitioner is entitled to file and maintain the instant writ petition.

On behalf of the respondents, it is submitted that after the dismissal of the previous writ petition filed by the petitioner's husband, the subsequent writ petition is not maintainable. In such circumstances, the writ petition was "dismissed" and not "dismissed for default".

Be that as it may, delay in approaching the Court by legal heirs of an employee for the retiral benefits has been held to be not fatal by the Hon'ble Supreme Court in the judgment of ***Union of India & Ors. Vs. Tarsem Singh*** reported in 2008(8) SCC 648 if there is continuing wrong and that retiral benefits in absence of statutory provisions can also be claimed under Article 14, 19 and 21 as held in ***S. K . Dua Vs. State of Haryana & Anr.*** reported in [(2008) 3 SCC 44]. The petitioner's claim, if any, can be clarified as a continuing wrong if it is ultimately found that the petitioner's husband has not been given the benefit of ROPA, 2001.

In the aforesaid facts and circumstances, I direct the learned District Judge, Howrah to consider the petitioner's representation dated 22nd February, 2021 within

a period of six months from the date of communication of a server copy of this order.

The learned District Judge shall be free to decide on all issues since I have not gone into the merits of the matter. The learned District Judge shall pass a reasoned order explaining the entitlement if any, of the petitioner's late husband on account of implementation of ROPA, 2001.

The learned District Judge shall give a personal hearing to the petitioner by observing the prevailing Covid-19 protocol and communicate the reasoned order within a fortnight from the date of passing of the same. Nothing further remains to be adjudicated in this writ petition.

The writ petition is, therefor, disposed of.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted by the respondents.

(Arindam Mukherjee, J.)