

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 12410 of 2021

Menakarani Majumdar
Vs.
State of West Bengal & Ors.

Mr. Anirban Majumder
... For the petitioner

Mr. Tapan Kumar Mukherjee, AGP
Mr. Biswabrata Basu Mallick
Mr. Sayan Ganguly
... For the State

Mr. Kamal Kumar Chattopadhyay
... For the respondents no.2, 3, 4 & 5

The husband of the petitioner served the respondent no.1 from 25th September, 1958 till 30th June, 1984 and was thereafter absorbed in Food Corporation of India (in short "FCI") on and from 1st July, 1984. The petitioner's husband served FCI till 30th June, 1993 and retired therefrom on attaining the age of superannuation. The petitioner has filed this writ petition, inter alia, claiming family pension from the respondent no.1 for the services rendered by her late husband to the said respondent.

The issue of receiving family pension in a case like that of the petitioner had fallen for consideration before a Division Bench of this Court. By a judgment and order dated 1st August, 2016 passed in WPST 278-281 of 2014,

the Hon'ble Division Bench has held that in case of an absorbee pensioner entitled to pro rata pension under the provisions of Rule 189A of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (in short "DCRB Rules"), the family pension is not available. The petitioner, therefor, is not entitled to family pension.

The petitioner has raised another issue that her husband during his lifetime has not been paid the full amount on account pro rata pension. The petitioner's husband served the respondent no.1 between 25th September, 1958 and 30th June, 1984. Thereafter, he served FCI on and from 1st July, 1984 and retired on 30th June, 1993 and died on 19th October, 2008. The claim for pro rata pension is for serving respondent no.1 between 25th September, 1958 and 30th June, 1984. The right to get pro rata pension fructified in favour of the petitioner's husband on or after 30th June, 1984. Even if the pro rata pension was given much after 30th June, 1984 then also the claim for non-payment is a vintage one made after at least 25 years. The petitioner's husband though had made representations before the respondents regarding non-payment of the full amount of pro rata pension but had never approached the Court asserting his right or seeking redressal of such issues when the representations were not considered and disposed of. Considering that the retiral benefits to be a property and forms part of the estate left behind by a deceased to the beneficiaries, the petitioner, at

the highest, can claim to be the beneficiaries of the estate left behind by her husband.

It is true that approaching the Court at a belated stage for claiming retiral benefits is not always fatal as held in the judgment of *S.K. Dua v. State of Haryana & Ors.*, reported in (2008) 3 SCC 44. However, as settled in *Union of India & Ors. v. Tarsem Singh*, reported in (2008) 8 SCC 648 that if a person approaches the Court after an inordinate delay claiming retiral benefits, the writ petition is liable to be dismissed on the ground of inordinate delay or laches. This view has been further approved in the judgment of *Asger Ibrahim Amin v. Life Insurance Corporation of India*, reported in (2016) 13 SCC 797.

In the instant case, assuming without admitting that the petitioner's husband was not paid the entire amount of pro rata pension, then also the writ petition is liable to be dismissed for the petitioner having approached this Court only on 5th August, 2021 when the writ petition was filed. The writ petition is, therefor, filed 13 years after the death of the concerned employee. This fact coupled with the fact that the right, if any, accrued immediately after 30th June, 1984 establish an inordinate delay for which the writ petition is required to and should be dismissed. That apart and in any event, it will be mere impossible to reconcile the bank accounts statements between 1993 and 2008 in 2022 to ascertain whether the

petitioner's husband had been paid the entire amount of pro rata pension.

Considering these aspects of the matter, the writ petition is dismissed, however, without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)