IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 724 of 2017

Reserved on : 07.08.2023
Pronounced on: 01.09.2023

Smt. Tripti Bhattacharya

...Petitioner

-Vs-

The State of West Bengal & Ors. ...Respondents

Present:-

Mr. Indranil Chakraborti
Ms. Molly Saha

... for the Petitioner

Rajarshi Bharadwaj, J:

1. The instant writ petition has been preferred challenging the order passed by the Director of Pension, Provident Fund and Group Insurance, the Department of Finance, Government of West Bengal to the payment of accrued interest on the outstanding quantum of family pension owed to the petitioner.

2. In a succinct exposition of the case, it emerges that the petitioner's spouse, namely one Moni Bhusan Bhattacharya, was designated as an Assistant Teacher at Mohanpur K.K.G.C Institution (H.S) on the 16th day of August, 1956. Regrettably, he met with an untimely demise while still in active service on the 26th day of August, 1959. In light of the petitioner's status as the lawful wedded wife of the deceased, she proceeded to make an application seeking the grant of family pension along with the requisite terminal/retiral benefits as stipulated by pertinent statutory provisions.

3. Following an extended period of persistent persuasion, the Pension Payment Order (hereinafter referred to as "P.P.O") No. Sec/S/ALP/00605/2011, dated 21st November 2011, was duly issued by the Assistant Director of Pension, Provident Fund and Group Insurance, an entity operating within the ambit of the Department of Finance, Government of West Bengal herein the respondent no.4. This issuance pertained to the petitioner's entitlement to family pension, with effect from the 1st day of April 1981. As a consequence thereof, the petitioner found herself in receipt of a substantial sum totaling Rs.5,32,316/-, constituting the arrears due for family pension from the 1st day of April 1981. It is, however, noteworthy that while the petitioner did receive the aforementioned arrears, the accrual of interest on the stipulated arrear sum of family pension has been conspicuously absent.

4. Owing to which the petitioner made a representation dated 21st June, 2012 to the respondent no.4 requesting to take necessary steps to disburse the interest over the arrear amount of family pension which the respondent authorities failed to provide and the Director of Education herein the respondent no.2 for releasing the said interest amount respectively. As no steps were taken to calculate and release the statutory interest over the arrear amount of family pension, the petitioner filed a writ petitioner before this Hon'ble Court being W.P No. 8901 (W) of 2013.

5. The order passed by the Learned Single Judge in W.P No. 8901 (W) of 2013 directed the petitioner to file representation before respondent no.4 and directed the respondent no.4 to consider and dispose of the representation of the petitioner within a period of four weeks from the date of receipt of such representation. The petitioner immediately acted upon the order passed by the Learned Single Judge and filed her representation on 12th August, 2016 which was duly accepted by respondent no.4 on 20th August, 2016. A notice was thereafter issued to the petitioner to appear for hearing on the

22nd September, 2016. The petitioner appeared for hearing on the above mentioned date along with all relevant documents. However, by an order dated 8th November, 2016 the respondent no.4 rejected the prayer of the petitioner to pay an interest @ 9% per annum for the arrear amount of family pension. Thus, being aggrieved by such order passed by respondent no.4 the present petitioner has been preferred.

6. Submissions of the counsel for the petitioner are that representations were made by the petitioner to the respondent authorities, seeking the inclusion of interest on the arrear disbursement of the family pension amount. Notwithstanding the petitioner's earnest representations, the concerned respondents failed to undertake the computation and subsequent disbursement of interest on the arrear sum pertaining to the family pension, which the petitioner is rightfully entitled to receive.

7. The grounds stated in the rejection order for denying the petitioner's request for interest on the overdue family pension are fundamentally unfounded. The circulars and memoranda referenced in the aforementioned order are inapplicable to the specific circumstances of the present case. It is imperative to note that the Government of West Bengal, through its Memorandum dated 24.08.2011, unequivocally declared the extension of all eligible entitlements under the West Bengal Recognized (Death-Cum-Retirement Benefit) Scheme 1981 to beneficiaries covered by G.O. No. 539-SE (P&B)/SL/ 5S-61/10 (Part) dated 01.11.2010, in conjunction with G.O No. 883- SE (Law) dated 12.07.2011, subject to identical terms and conditions. In instances where pension payment orders have been previously issued pursuant to G.O. No. 539-SE (P&B)/ SL/SS-61/10 (Part) dated 01.11.2010, read in conjunction with G.O No. 883- SE (Law) dated 12.07.2011, a revised Pension Payment Order is mandated to be issued by the competent pension payment order issuing authority, in alignment with the prevailing Memorandum, so as to effectuate its provisions.

8. Further relying on a Judgment dated 8th July, 2010 rendered by Justice Debasish Kargupta, the petitioner submitted that the said judgment not only accorded the petitioner with family pension commencing from April 1, 1981, but also explicitly mandated the award of interest at the pinnacle bank rate prevalent during that specific period.

9. The counsel representing respondents no. 4 and 5 contend that the petitioner's spouse, who was a teacher, passed away during active service on the 26th day of August, 1959. It is emphasized that cases pertaining to deaths or retirements predating the year 1981 were not encompassed within the ambit of the DCRB Scheme, 1981. However, it is crucial to note that the provisions of the aforementioned Scheme, established in 1981, were subsequently extended to cover instances involving teachers, who had passed away before the 1st of April, 1981. This extension was effectuated through Government Order, as delineated in Memorandum No. 539-SE dated 1st November, 2010. The implementation of this Government Order was underpinned by a ruling rendered by this Hon'ble Court on the 29th of July, 2009, in **W.P. No. 953 (w) of 2006 (Indu Prova Ghosh-VS- State of West Bengal and Ors.).**

10. Therefore, it is contended that, until the pronouncement of this judicial decision, the State Authorities were not legally obliged to disburse pension benefits in cases involving pre-1981 deaths. Subsequent to this ruling, the petitioner, who is the widow of the deceased teacher, duly sought to invoke and enforce the provisions enshrined in the aforementioned Government Order No. 539 dated 1st November, 2010.

11. It has been further submitted that issuance of entitlement of interest on arrear pension in respect of pre 1981 pension cases had been decided by the Hon'ble Division Bench of this Court in the case of **DPPG vs Subhadra Pradhan** wherein it was held that the interest on arrear family pension shall be calculated on the amount payable towards family pension as on 1st November 2010 till the date of issuance of PPO and said Judgment of the

Division Bench passed by the Hon'ble Court has not been challenged in any way. Therefore, the said Judgment will have binding effect to all such similar cases including the present case of the writ petitioner. Hence, the respondent no. 4 had rightly passed the order dated 08.11.2016.

12. Having heard the learned counsel for parties and on perusal of records this Court is of the view that a well-established legal principle exists, affirming the significant entitlement of a retired employee to receive their retirement benefits upon reaching the age of superannuation. This entitlement is recognized as a substantive right conferred in favor of the petitioner's spouse. Furthermore, the concept of pension has evolved beyond a discretionary grant by the State rather; it is now regarded as an enforceable entitlement for an employee upon their retirement. In instances where the disbursement of said pension is subjected to delay, the retired employee is unquestionably entitled to receive equitable compensation in the form of interest for the aforementioned deferred payment.

13. In the instant matter, it was incumbent upon the State to duly disburse the pension amount in a timely manner. In the event of its failure to fulfill this obligation, resulting in the belated release of said sum without reasonable justification, it becomes obligatory to remunerate the legal heirs of the retired employee with interest. This compensation serves a remedial purpose. Pension and gratuity serve the purpose of sustaining the livelihood of a retired employee and their dependents, constituting elements of welfare provision.

14. The Supreme Court in **D.D. Tewari (Dead) Through Legal Representatives v. Uttar Haryana Bijli Vitran Nigam Limited and Others reported in (2014) 8 SCC 894** held that- *"The Rule that the High Court may not enquire into belated and stale claim is not a Rule of Law, but one of practice based on sound and proper exercise of discretion. The principle on which the relief to a party is denied on the ground of laches or delay is that the rights which have accrued to others by reason of delay in approaching the Court should not be allowed to be disturbed."*

15. Consequently, considering the aforementioned circumstances and taking into account the precedent set by the Supreme Court in the matter of D.D. Tewari (spura), this Court hereby instruct the respondent no.4, to disburse interest to the petitioner at the maximum banking rate prevailing for payment of interest on fixed deposits. This interest is applicable to the sum released in favor of the petitioner as part of pensionary benefits, commencing from the date of family pension application and continuing until the issuance of the Pension Payment Order. The disbursement of said interest is mandated to be executed within a span of twelve weeks from the date of the communication of this order to the relevant authorities.

16. For the foregoing reasons the writ petition is, accordingly, allowed. All pending applications are accordingly disposed of.

17. There will be no order as to costs.

18. 18. Urgent certified copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata
01.09.2023
PA (BS)