DL-9 wt 10

22.09.2023
Court No.5
(AD)

WP.ST 190 of 2019

State of West Bengal & Ors.
Vs.
Smt. Tagar Mandal

With
WP.ST 10 of 2020
IA No.: CAN 1 of 2023

Smt. Tagar Mandal
Vs.
The State of West Bengal & Ors.

Mr. Tapan Kumar Mukherjee
Ld. Sr. Advocate & Ld. AGP
Mr. Pinaki Dhole
Mr. Somnath Naskar
… for the State.

Mr. Milan Chandra Bhattacharjee, Ld. Sr. Advocate
Ms. Sulagna Bhattacharyya
… for the respondent in WP.ST 190 of 2019 and petitioner in WP.ST 10 of 2020..

In re.: **IA No.: CAN 1 of 2023**
In
WP.ST 10 of 2020

CAN 1 of 2023 is an application for restoration.

For the ends of justice and on the basis of the pleadings made in the application for restoration, the order dated August 30, 2023 dismissing the writ petition is recalled.

CAN 1 of 2023 is allowed.

WP.ST 10 of 2020 is restored to its original file and number.

In re.: **WP.ST 190 of 2019**
With
WP.ST 10 of 2020

The Coordinate Bench took up two writ petitions for analogous hearing, namely, WP.ST 190 of 2019 and WP.ST

10 of 2020. Consequently, both the writ petitions are taken up for analogous hearing.

Both the writ petitions emanate out of the order dated January 17, 2019 passed by the West Bengal Administrative Tribunal in OA 209 of 2015.

By the impugned order, the learned Trial Judge granted interest at the rate of 8 per cent per annum on the sum of Rs.14,02,340/- for the period from December 7, 2013 till March 11, 2014.

Learned Senior Advocate appearing for the State submits that, there was delay in the employee submitting relevant documents for her 82 days' unauthorized absence. Subsequently, on document being submitted, the claim was processed and the payment made. Moreover, the rate of interest imposed was high. No nationalized bank charges interest at the rate of 8 per cent per annum.

Learned Advocate appearing for the employee submits that, the employee is entitled to interest at the rate of 10 per cent per annum on the entire amount of arrear of salary for the delayed payment of such amount for the period from March, 1991 till March, 2014.

We considered the rival contentions of the parties. The employee joined the post of Health Assistant (Female) in terms of the order dated February 15, 1990 issued by the Director of Health Services, West Bengal. The employee sought grant of benefit under the Career Advancement Scheme (CAS) for completion of statutory service of 10 years and 16 years in terms of the ROPA 1998 and ROPA 2009. The employee approached the Tribunal by filing OA-1344 of 2011 which was disposed of by an order dated April 2, 2012 directing the Director of Health Services, West Bengal to decide the claim of the employee with regard to non-payment of increment and non-payment of benefit of CAS by passing a reasoned order. Director of Health Services passed a reasoned order on February 6, 2013. The Chief Medical Officer of Health, Purulia was directed to conduct an enquiry in connection with withholding of benefit of service to the employee and to take appropriate steps for regularization of unauthorized absence from duty. Ultimately, on August 16, 2013, the unauthorized absence of the employee was regularized. Extraordinary leave of 82 days for the period from March 15, 1990 to June 4, 1990 was granted. Subsequent to unauthorized absence being regularized, the authorities granted annual incremental benefit to the employee from the date of joining in the service and benefit of the CAS to the employee by an order dated September 7, 2013. The employee received arrears of salary to the tune of Rs.14,02,340 on March 12, 2014.

The claim for interest on delayed payment of salary for the period from March, 1991 till March, 2014 of the employee is without any substance in view of the fact that, the employee was guilty of unauthorized absence and that, unauthorized absence was regularized only on September 7, 2013.

The employee concerned received payment on March 12, 2014. The Tribunal took into account the fact that, the employee was entitled to arrears of salary for the period from December 7, 2013 to March 11, 2014 and directed payment of interest at the rate of 8 per cent per annum.

The rate of interest may or may not be over the fixed deposit rate of interest in any nationalized bank at that material point of time. However, the Tribunal or a Court is not constrained by the fixed deposit rates of any nationalized bank in awarding interest. A Court or a Tribunal can award interest taking into account the overall facts and circumstances of the case, the nature of the claim as also the nature of the transactions and the rate of interest in respect of commercial transactions. The Tribunal exercised discretion in granting interest at the rate of 8 per cent per annum for the period noted in the impugned order.

The Court is informed that, payment in terms of the impugned order was already made on behalf of the State.

We find no material to upset the discretion exercised.

In such circumstances, we find no merit in the two writ petitions filed.

WP.ST 190 of 2019 and **WP.ST 10 of 2020** are dismissed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)