

14.09.2023
SL No.5
Court No.8
(gc)

**FMA 859 of 2022
CAN 1 of 2023**

**Nilmani Chakraborty
Vs.
State of West Bengal & Ors.**

Mr. Tarapada Das,
Mr. Chandan Dutta,
Mr. Goutam Malik,
...for the Appellant.

Mr. Tapan Kr. Mukherjee, A.G.P.,
Ms. Sangeeta Roy,
...for the State.

Mr. Susanta Pal,
Ms. Ananya Neogi,
...for the Respondent No.5.

1. We have heard the learned Counsel for the appellant and Mr. Tapan Kr. Mukherjee, learned A.G.P. on behalf of the State.
2. The writ petition was dismissed on the ground of delay. Normally, the Court shall not dismiss the writ petition on the ground of delay unless a valuable right has accrued in favour of the third party. In the instant case, the wife of the writ petitioner was an Assistant Teacher of a Primary School and she retired from service on 30th June, 2002. The Pension Payment Order was issued in favour of the retired teacher on 30th November, 2004 and the teacher died on 26th April, 2005. After the death of

teacher, the petitioner started receiving the family pension. The writ petitioner approached the Trial Court upon ascertaining that the fixation of pay of the Assistant Teacher was not in accordance with the ROPA, 1998. She made a representation on 20th October, 2015 before the Director, Pension, Provident Fund and Group Insurance. In view of the failure on the part of the Director to consider the representation, the writ petition was filed being WP No.7768(W) of 2016 (Nilmani Chakraborty Vs. The State of West Bengal & Ors.) which was disposed of by an order dated 7th October, 2016 directing the respondent authority to consider the representation made by the writ petition on 28th October, 2015. The said representation was dismissed on the ground of delay.

3. Ordinarily, the State shall not take any ground of delay so as to defeat the bona fide and legitimate claim of its citizen. Moreover, we would expect that the teacher who had served the institution as an Assistant Teacher diligently should not be deprived of her legitimate dues irrespective of the fact that she had received an

amount less than her entitlement. The principle 'delay defeats equity' will not be applicable in all cases. The State authorities are expected to act as a model employer.

4. On such consideration, we feel that once it is established that the fixation of pay was wrong and not in accordance with ROPA, 1998 it is in the fitness of thing that the family pension shall be re-fixed.
5. In any event, the primary responsibility lies with the respondent authorities in fixing the pay scale of the teacher in accordance with applicable ROPA and if it is found to be a mistake of the respondent authorities, they are duty-bound to rectify the defects irrespective of the time limit.
6. Accordingly, we remand the matter to the Director, Pension, Provident Fund and Group Insurance, the respondent No.3, for a fresh consideration, keeping in mind the observation made in this order.
7. The impugned order is set aside.
8. The Director, Pension, Provident Fund and Group Insurance is directed to reconsider the representation dated 28th October, 2015 within 8 weeks from the date of communication of this order by either of

the parties after giving a reasonable opportunity of hearing to the parties and by a reasoned order.

9. The appeal and the application, accordingly, stand disposed of.

10. However, there shall be no order as to costs.

11. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Partha Sarathi Sen, J.)

(Soumen Sen, J.)