

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

FMA 1242 of 2021

With

CAN 1 of 2021

The Calcutta State Transport Corporation & Ors.

-Vs

Himangshu Sarkar & Ors.

For the appellants : Mr. Amal Kumar Sen

Mr. Sabyasachi Mondal

For the respondents : Mr. Tapas Kumar Mandal

Heard On : 18.04.2023

Judgement Delivered On : 28.06.2023

Supratim Bhattacharya, J.:-

1. The appellant herein, that is the Calcutta State Transport Corporation, has challenged the order of the Hon'ble Single Bench passed in the writ petition being WPA No. 4211 of 2008 dated 07.04.2021.

2. Through the impugned order the Hon'ble Single Bench has been pleased to direct the appellant Corporation to pay interest to the respondent/writ petitioner namely, Himangsu Sarkar, at the rate of 7% from the date of his superannuation on the sum of Rs. 5,48,627/- being the balance of arrear pension which has accumulated from time to time as per ROPA or other relevant circulars and after due adjustment of the quantum of pension already paid to the respondent till the date of the impugned order.
3. The appellants herein were the respondents in the writ petition while the respondent was the writ petitioner in the writ petition.
4. The factual aspect which has given rise to the *lis* is as follows:

The writ petitioner was posted as Assistant Head Cashier on 01.07.1996 till his date of retirement from service on 31.01.1997 in the Calcutta State Transport Corporation. At the time of retirement the writ petitioner was a member/contributor of provident fund scheme and applied for disbursement of accumulated contributions made by both the employer and the employee in the Contributory Provident Fund Scheme as well as the gratuity under the Payment of Gratuity Act. In exercise of the power conferred under Section 45 of the Road Transport Corporation Act, 1950, the appellant corporation with the previous sanction of the State Government introduced the Calcutta State Transport Corporation Employees (Death Cum Retirement Benefit Regulations 1990) (hereinafter referred to as DCRB Regulations 1990) giving the same

retrospective effect from 1.4.1984 whereby the Pension Scheme as introduced was made optional for the employees who had been on the payroll of the appellant Corporation as on 1.4.1984 as well as who remained on payroll of the Corporation till the date of Notification, such Pension Scheme became binding on and from the date of the official Notification. Thereafter the said DCRB Regulations were amended twice till 2002 and as per the amended provisions of the DCRB Regulations the respondent/writ petitioner became entitled to pension with effect from 1.4.1997 and was not entitled to any arrears. The writ petitioner received the full benefit under the Contributory Provident Fund and the CSTC is not entitled to get refund of employer share of contribution in CPF scheme and the writ petitioner having been paid the gratuity under the gratuity was not entitled to get any gratuity under the DCRB Regulations.

The respondent/writ petitioner after obtaining knowledge of extension of time to file option for pension under the said Pension Scheme submitted his option for pension on 26.3.1999 and finally submitted ECS Mandate Form on 06.2.2002 for receiving his pension through his banker.

The respondent/writ petitioner preferred a writ petition being WP 10829 (W) of 2004 after his representation seeking disbursement of monthly pension after having failed to draw due attention of the CSTC.

The said WP 10829 of 2004 was disposed of by the Hon'ble Single Bench directing the authority to reconsider the decision of non-payment of

pension on the ground of pendency of criminal proceeding also invoking Rule 14 whereby there is a provision of granting interim allowance not exceeding 2/3rd of the pension. Thereafter another writ petition being WP 4211 (W) of 2008 was preferred wherein it was disclosed that the respondent writ petitioner was getting 2/3rd pension. Ultimately on 15.12.2016 the respondent/writ petitioner has been acquitted from the criminal proceedings and as such prayed for granting full pension. Thereafter the writ petition being WP 4211 of 2008 which has given rise to the instant appeal was preferred, wherein the impugned Judgement and Order has been passed.

5. Through the impugned order the CSTC was directed to issue the PPO in respect of the writ petitioner and the admitted arrears were to be paid to the writ petitioner together with interest at the rate of 7% per annum on and from the date of superannuation till the date of actual payment. The impugned order also directs that the interest has to be applied from the date of superannuation on the said sum of Rs. 5,48,627/- despite the fact that certain ROPA revisions were allowed in the CSTC with effect from 2011, in view of the fact that the writ petitioner has not received due pension within the month from his superannuation.
6. The Ld. Counsel appearing on behalf of the appellant has submitted that the interest of 7% which has been levelled in respect of the entire amount of Rs.5,48,627/- to be calculated upon the arrear pension from 1.4.1997 to 28.2.2021 is not in accordance with law and is very harsh. The Ld.

Counsel further submitted that the respondent/appellant received lesser amount of pension due to no laches on the part of the appellant/CSTC but because of the pendency of a criminal proceeding which involved Prevention of Corruption Act. He further submitted that in law the respondent/writ petitioner was not entitled to the entire pension as such the appellant was receiving lesser amount of pension, that is 2/3rd of his normal amount. Considering the aforesaid facts and circumstances, the Ld. Counsel has prayed for allowing the instant appeal by cancelling the order of imposition of 7% interest on the entire arrear pension amount from the date of superannuation that is 1.4.1997.

7. Ld. Counsel appearing on behalf of the respondent/writ petitioner has submitted that the respondent/writ petitioner has suffered since the year 1997 for no fault of his. On apprehension, assumption and with ill motive false criminal case was instituted against the respondent/writ petitioner during the fag end of his service career. He has further submitted that the said criminal case which was instituted had no leg to stand upon and as such it has received the fate which it ought to have received. Banking upon the aforesaid facts and circumstances the Ld. Counsel prayed for rejecting the instant appeal.
8. On consideration of the entire facts and circumstances of the *lis* it is apparent that the moot point is as to whether the imposition of interest of 7% on the entire arrear pension amounting to Rs. 5,48,627/- starting from 1.4.1997 till 28.2.2021 is at all tenable in law.

9. First of all this Court goes into the fact wherefrom the instant appeal has arisen. The crux is that the respondent/writ petitioner did not receive his normal pension which he ought to have received if the criminal case was not pending against him. The criminal case was under Prevention of Corruption Act along with Indian Penal Code. It is apparent that the CSTC could not prove the criminal proceeding which was the cause for non receipt of the full pension amount. The criminal proceeding being not proved in the trial the respondent/writ petitioner has been acquitted. The writ petitioner had to bear the financial hardship during this long period for which the said respondent/writ petitioner cannot be held liable at this juncture. A person who is not liable for an act cannot be held to bear the consequences for the said act. As such the respondent/writ petitioner being entitled to receive the arrear pension is also entitled to receive interest upon the said amount from the date of his superannuation

In such circumstances this Court finds no infirmity in the order of the Hon'ble Single Bench.

Accordingly, the Judgement and Order of the Hon'ble Single Bench deserves no intervention.

FMA 1242 of 2021 with **CAN 1 of 2021** stands accordingly **dismissed**.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.

(Subrata Talukdar, J.)

(Supratim Bhattacharya, J.)