**16.06.2023**
**DL-31**
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

**WPA 11210 of 2022**

**Sri Surja Kanti Karmakar**
**Vs.**
**Union of India & Ors.**

Mr. Bikash Shaw
....for the petitioner.

Ms. Aparna Banerjee
....for the respondent no.2.
Mr. Soumya Majumdar,
Ms. Amrita Pandey
....for the respondent no. 4.

The petitioner was a workman of the respondent no.4/Murlidhar Ratanlal Exports Private Limited. The petitioner was superannuated from his employment with effect from July 1, 2017. The case of petitioner is that despite being superannuated on July 1, 2017, the petitioner did not receive his monthly pension, arrears of pension till September 29, 2022. He, therefore, prays for interest on the arrears of pension. The instant writ petition was filed on June 17, 2022. After filing of the writ petition, the employer/respondent no.4 settled the dues of petitioner and submitted the documents before the Regional Provident Fund Commissioner. The claim of the writ petitioner was received by the office of the Regional Provident Fund Commissioner on September 20, 2022. The respondent no.2 released the dues of the petitioner within 20 days, on September 29, 2022. The petitioner prays for interest on the arrears from July 2, 2017 (the date subsequent to the date of retirement) till the date of actual disbursement on September 29, 2022.

Mr. Shaw, learned counsel appearing on behalf of the petitioner submits that despite no fault on the part of the petitioner the pensionary benefits of the petitioner was not released within a month from the date of retirement of the petitioner. The petitioner was unduly harassed despite rendering satisfactory service to the employer/respondent no.4. It is also argued that since the employer delayed in filing of Form 10D under the Employees' Pension Scheme, 1995 the Regional Provident Fund Commissioner delayed the payment of the pensionary benefits.

Mr. Majumdar, learned counsel appearing on behalf of the respondent no.4/employer submits that the necessary documents were received by the employer on July 9, 2022 from the employee. He submits that the employer immediately acted by filing the said documents along with Form 10D before the respondent no.2. Therefore, no negligence can be attributed to the employer. He draws the attention of this Court to paragraphs 18 to 24 of the Employees' Pension Scheme, 1995 to show that the entire statutory duty of the employer has been discharged. The liability/responsibility for delay in filing the form was primarily due to the inaction on the part of the petitioner. The petitioner failed to provide the necessary details to the employer and, therefore, the employer could not file the said form in 2017. Furthermore, it is no part of the statutory duty of the employer to file the said form on behalf of the employee. Therefore, the employer should not be saddled with the liability of payment of interest to the petitioner.

Ms. Banerjee, learned counsel appearing on behalf of the respondent no.2 submits that the respondent no.2 received the claim of the petitioner September 20, 2022. The Regional Provident Fund Commissioner discharged its statutory obligations within the stipulated time.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the pensionary benefits of an employee/workman cannot be unnecessarily withheld by the employer or any other authority concerned. Pension is not a '*bounty*' but an entitlement of the employee/workman.

The writ petition has been filed before this Court on June 17, 2022. From the affidavit of service affirmed on behalf of the petitioner, it appears that the said writ petition was served by June 22, 2022. The said service is not in dispute.

Upon receipt of the said writ petition, the employer took necessary steps to process the claim form of the writ petitioner. It may be true that there is no statutory obligation on the part of the employer to process such claim of the employee but the social and moral obligation cannot be ignored. The employer has provided the said benefit to its other employees/workmen and the claim form of the petitioner should also have been processed by the employer immediately upon his retirement on July 1, 2017. It cannot be accepted that since there is no statutory duty the employer will be negligent in processing the claim of the petitioner and forwarding the same to RPFC and then take the shield of lack of statutory obligation. The petitioner could not have been discriminated against.

This Court also cannot lose sight of the fact that the petitioner may not have been an educated person to realise whether Form 10D of the scheme has been properly filled and forwarded by the employer to the authority concerned/respondent no.2.

From the Report-on-Affidavit filed on behalf of the respondent no.4 affirmed on January 5, 2023, it appears that the application form for payment of provident fund dues was processed in 2017 itself and the dues were paid to the petitioner.

To the mind of this Court, it appears that since the employee/petitioner filed an application form on August 7, 2017 for Provident Fund refund, the petitioner's claim that he had also filed the necessary form for processing pensionary benefits has some justification. The employee could not have unnecessarily delayed supplying of the necessary information for processing of the pensionary dues by filing of form 10D. It is also perplexing to this Court that all the documents of 2017 which were handed over to the employer have been retained by it but no evidence of the necessary documents being handed over to the employer on July 9, 2022 was retained by it. Moreover, this Court finds it difficult to accept the submissions on behalf of the employer that the workman after filing of the writ petition and service of the same decided to give the information necessary for processing of the said form and not prior to the same. This Court also finds it difficult to accept the submission that payment to one such workman will open floodgates of such claims and therefore the petitioner's claim should not be entertained since the right of a poor employee/individual would have to be protected.

No document has been shown to corroborate the argument of the employer that the claim form has been handed over by the petitioner to the employer only on July 9, 2022. Therefore, the said form could not be processed before July, 2022.

In the light of the discussions above, this Court directs interest @ 6% per annum to be paid by the employer/respondent no.4 to the petitioner from July 2, 2017 (the date subsequent to the date of retirement) till September 20, 2022 (the date on which admittedly the form was duly processed and submitted before the Provident Fund Authorities). Such interest will be paid to the petitioner within 3 months from the date of the order.

With the directions aforesaid, **WPA 11210 of 2022** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(**Lapita Banerji, J.**)