

06.09.2023
Item No.3
Ct. No.5
CHC
(dismissed)

WP.ST 129 of 2023

Sadhan Chandra Das
Vs.
The State of West Bengal & ors.

Mr. Pankaj Halder,
Mr. Neelabha Bera
...for the writ petitioner

Mr. Tapan Kr. Mukherjee, Sr. Advocate & A.G.P.
Mrs. Sangeeta Roy
...for the State-respondents

The writ petition is directed against an order dated August 21, 2023 by the West Bengal Administrative Tribunal in O.A.138 of 2023.

By the impugned order, the Tribunal refused to intervene given the delay of 11 years from the accrual of the cause of action.

Learned advocate appearing for the writ petitioner submits that, the writ petitioner was appointed as a Correspondence Clerk by a writing dated August 25, 1998 by the District Magistrate. He was absent for the period from March 31, 2011 to July 27, 2011. The Block Development Officer issued a suspension letter dated November 19, 2012 without any jurisdiction. The Block Development Officer is not the appointing authority nor the controlling authority and therefore, suspension order issued was without jurisdiction.

Learned advocate appearing for the writ petitioner submits that salary of the writ petitioner was stopped with effect from December 31, 2012. He refers to a letter dated July 21, 2017 by which, the petitioner was allowed to rejoin his duties. Petitioner rejoined his duties from December 15, 2017. Petitioner was granted a promotion on August 12, 2021. Petitioner superannuated subsequently.

Learned advocate appearing for the writ petitioner submits that, the writ petitioner approached the High Court in 2018 by way of W.P.A.1778 of 2018, which was disposed of on February 20, 2023 permitting the writ petitioner to approach the appropriate forum. Subsequent thereto, the writ petitioner, approached the Tribunal, by way of O.A.138 of 2023 which was disposed of by the impugned order.

Learned advocate appearing for the writ petitioner submits that, the writ petitioner is entitled to arrears salary for the period from November 19, 2012 till December 15, 2017 along with all retiral benefits.

Learned advocate appearing for the writ petitioner submits that, the writ petitioner was never paid his salary till his superannuation on June 30, 2023. The writ petitioner is entitled to salary with

effect from December 31, 2012 till the date of superannuation along with retiral benefits.

Learned Senior Advocate appearing for the State submits that, there is a criminal proceeding pending as against the writ petitioner for defalcation of the public money. Charge-sheet was submitted before the jurisdictional Court. The writ petitioner did not avail of his so-called rights before the Tribunal within the period prescribed. The writ petitioner did not explain the delay in approaching the Tribunal in the Original Application. According to him, the Tribunal correctly held that, the Original Application was barred by limitation.

We perused the Original Application which is annexed to the writ petition. In paragraph-3 of such Original Application, the writ petitioner sought to explain the delay in approaching the Tribunal on wrong legal advice. The writ petitioner clarified that the wrong legal advice was with regard to approach to the High Court only by filing a writ petition being W.P.A.1778 of 2018.

Separate application for condoning the delay was not filed by the writ petitioner before Tribunal.

The only explanation therefore, is paragraph-3 of the Original Application where, the delay explanation for the delay commences from 2018 when the writ petition was filed. However, the writ

petitioner failed to explain the delay for the period from November 19, 2012 when he was placed under suspension till 2018. Even taking the date when his salary was stopped on December 31, 2012, the writ petitioner did not explain delay for six years therefrom till approaching the High Court in 2018.

Therefore, on the ground of delay alone, the impugned order of the Tribunal cannot be faulted.

That apart, the prayer is one for release of salary to the writ petitioner. The writ petitioner was admittedly absent for the period from March 31, 2011 till July 27, 2011. He did not work from November 19, 2012 till December 15, 2017 being the period when he was placed under suspension.

There is an allegation of defalcation of public money involved as against the writ petitioner. Criminal proceedings are underway against the writ petitioner. Allowing the writ petitioner to withdraw salary for any period of time may result in loss to State. The State may not be able to recoup the financial impact in the event, the criminal case is held as against the writ petitioner. Therefore, at this stage, directing release of the salary for any period of time to the writ petitioner will not be in public interest.

In such circumstances, we find no merit in the present writ petition.

WP.ST 129 of 2023 is dismissed without any
order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)