

24.01.2023
item No.44
n.b.
Ct. no.21

WPA 25141 of 2022

Ajoy Kumar Ghosh & Ors.
-Vs-
The State of West Bengal & Ors.

Mr. Subhadeep Chatterjee,
Ms. Arpita Kundu,
... for the Petitioners.
Mr. Panaki Dhole,
Mr. Ananda Dulal Sarkar,
..... for the State.
Ms. D. Chattaraj,
Mr. Kollol Ghoshal
.... For the WBTC.

The petitioners claim interest on arrears for the period from April 1, 1997 to March 31, 2000 to be calculated from April 1, 2000. The petitioner nos.2 to 3 are retired employees of the West Bengal Transport Corporation (in short, "WBTC"), previously known as the Calcutta Tramways Company (1978) Ltd. The petitioner nos.14 to 33 are still employed with WBTC. The petitioners claimed interest on arrears on account of delayed payment of ROPA 1998 benefits. The Employer/WBTC was required to pay the arrears by way of five annual instalments. The first instalment was to start on November 1, 2002. The employer was unable to make payments within the stipulated period of time. The last of the payment was made in 2008 Therefore, the claim has been made on account of interest on arrears.

Mr. Chatterjee, learned counsel appearing on behalf of the petitioners submits that by an order dated January 5, 2022 passed in **FMA 1275 of 2016 (Nabin Kumar Jha & Ors. Vs. State of West Bengal & Ors.)** a Division Bench of this Hon'ble High Court allowed interest on arrears despite the fact that the appellants/writ petitioners approached the respondent belatedly for payment of interest.

Ms. Chattoraj, learned counsel appearing on behalf of the WBTCCL submits that claim of the petitioner nos.2, 3, 4 and 6 are not maintainable since no claim on account of interest on arrears have been made within three years from the cessation of the employer-employee relationship. Since the claim on account of interest is in the nature of money claim, the said claim could only be considered if raised within a period of three years from cessation of such a relationship. She relies on an order passed by the Co-ordinate Bench of this Hon'ble Court in **WPO 1465 of 2022 (Kamal Kumar Guin & Ors. Vs. The State of West Bengal & Ors.)**. refuting the claims of petitioner Nos. 2,3,4 and 6.

Having considered the rival submissions of the parties and materials placed on record, this Court finds that the entitlement to be paid arrears on account of delayed payment arose due to failure on account of the employer/WBTCCL to pay the five instalments within a stipulated period of time as assured by the Memo dated

April 6, 2001. This Court relies on **Nabin Kumar Jha (supra)** for coming to the finding that the respondent/WBTCL company cannot non-suit the petitioners on the ground that they have approached this Writ Court or the respondent belatedly. ROPA 1998 was for revision of pay and allowances of the employees and revised benefits were not paid by the employer within the stipulated period of time for no fault on the part of the employees. The employer also failed to make payments of the same by way of five instalments by 2007.. Therefore, the entitlement for payment of interest has taken a statutory colour and the petitioners should be granted the same.

The Hon'ble Co-ordinate Bench relied upon the decision of the Apex Court in **Civil Appeal No.5151-5152 of 2008 (Union of India & Ors. Vs. Tarsem Singh)**.

In **Tarsem Singh (supra)** it was clearly decided that the relief of payment of the arrears would normally be restricted to three years prior to the date of filing of the writ petition. Furthermore, as long as the claim of the petitioners does not lead to reopening of settled rights of third parties a belated claim may be considered.

There is no question of any reopening of any settled third party rights in the present case. Furthermore, the period for which interest is payable has also crystalized i.e. from April 1, 2000 (being the date from which the benefits of ROPA 1998 were to be granted) till the date in

2008 when the benefits were actually granted. Just because the claim for payment of interest on arrears have been filed at a belated stage the same will not expose/has not exposed the employer to a greater financial liability. The Employer cannot now seek to rely on the ground of limitation for negating the legitimate claims of the petitioner after failing to comply with their own assurance. The balance of convenience weight in favour of granting interest in favour of the retired employees/petitioners. Prejudice caused to an employee due to non compliance of a statutory rule/obligation by the Employer/State has to be viewed differently from a simple money claim arising out of a contractual obligation of a private employer.

This Court also finds that there is no material difference between the petitioners who are working as on date and the petitioner who have retired since the nature of claim and the period of the same is the similar.

The fact of this case is distinguishable from **Tarsem Singh(Supra)**. In that case, the petitioner claimed family pension that she was entitled to under the law. In the present case, not only were the petitioners entitled to the benefits of ROPA 1998 under the law but also there was an assurance on the part of the employer to pay the same by way of Memorandum dated April 1, 2000 and the employer has failed to keep with the said assurance.

Therefore, this Court allows the payment of interest on arrears from April 1, 2000 till the actual date of

payment in 2008 at the rate of 6% per annum. The said interest is to be paid to the petitioners within a period of four months from the date of communication of this order.

With the aforesaid directions, **WPA 25141 of 2022** is **disposed of**.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Lapita Banerji, J.)