

10.01.2023
DL-19
(PP)
Ct.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 28331 of 2022

Abhijit Roy
Vs.
North Bengal State Transport Corporation & Ors.

Mr. Subrata Das	for the petitioner.
Mr. Amal Kumar Sen	for NBSTC.
Mr. Pranab Halder	for the State.

The petitioner's father was an employee of the North Bengal State Transport Corporation (in short, "NBSTC"). The petitioner's father died-in-harness on September 26, 2010. The deceased employee's first wife was paid family pension till February 10, 2011. Thereafter, the petitioner being the son of the deceased employee received pension with effect from October, 2017 till the age of 25 years, i. e. on or about November 5, 2019.

The Learned Counsel appearing on behalf of the petitioner submits that the petitioner is entitled to payment of arrears from November 6, 2011 till October 3, 2017 along with interest @ 18% per annum.

Mr. Amal Kumar Sen, learned Additional Government Pleader, appears on behalf of the employer/NBSTC and submits that the instant writ petition has been belatedly filed. The petitioner had already been paid pension from 2017 till 2019. At best, the petitioner could have prayed for arrears only for 3 years prior to filing of the writ petition. The writ petition has been filed in December, 2022. Therefore, no claim for arrears and/or interest is maintainable.

In support of his contention he relies on Supreme Court decision reported in (2008) 8 SCC 648 (**Union of India & Ors. Vs. Tarsem Singh**). In that case, the Apex Court held that the delay of 16 years would affect consequential claim for arrears of the petitioner. The High Court was not justified in granting arrears relating to 16 years that too along with interest. The High Court ought to have restricted the relief relating to arrears to only three years before the date of the writ petition or from the date of demand.

Having considered the rival submissions of the parties and the materials placed on record, this Court finds that the facts of the present case are distinguishable from that of **Tarsem Singh** (supra). The amount of arrears that is due and payable to the petitioner is a liquidated amount payable for the

period from November 6, 2011 to October 3, 2017. The said entitlement of the petitioner is not in dispute.

Furthermore, the delay in claiming the benefits was of 16 years in **Tarsem Singh** (supra), whereas the petitioner in the present case has approached the Court within 5 years. Furthermore, he was paid family pension till October 2019 and there was a legitimate expectation on his part for being granted the amount of arrears while the family pension was being paid to the petitioner especially in the light of the fact that there was no rejection of claim/dispute regarding the non-granting of the arrears of the family pension since November 6, 2011.

Also following the decision of **Tarsem Singh** (supra), this Court finds that no third party rights would be affected if the arrears of the petitioner is granted.

In the light of the discussions above, this Court directs the respondent no.2 to release the arrears of pension to the petitioner for the period from November 6, 2011 to October 3, 2017, within 6 weeks from date.

Since the petitioner has approached this Court at a belated stage, this Court is not inclined to consider

the question of granting interest in favour of the petitioner.

With the directions aforesaid, the writ petition, being **WPA 28331 of 2022**, is **disposed of**.

Since no affidavits have been directed to be exchanged in the present writ petition, all the allegations contained therein are deemed not to have been admitted by the parties.

Stay as prayed for by Mr. Sen is considered and refused.

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.)