

Court No. 22

16.10.2023

(Item No. ML-
135)

(AB)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 31291 of 2014

Kazi Omar Ali

VS

The State of West Bengal & Ors.

Mr. Kazi Sajjad Alam

Ms. Afsana Khatun

.... For the petitioner

Mr. Shamim Ul Bari

.... For the State

Affidavit of service filed in Court today is taken on record.

This is a hearing matter.

Despite directions no affidavit-in-opposition was filed.

Considering the issue involved in this writ petition pending since 2014, this Court is of the view that, no fruitful purpose will be served by keeping the writ petition pending any further. Accordingly, this Court proceeds to dispose of the writ petition.

Mr. Shamim Ul Bari, learned State counsel appears for respondent Nos. 1 to 3, 5 and 6.

Referring to a previous order of a co-ordinate bench dated **February 10, 2012, Annexure P-5** at **page 24** to the writ petition, Mr. K. S. Alam, learned advocate appearing for the petitioner submits that, the previous writ petitioner being **W.P. 3239 (W) of 2009** was disposed of with the following direction:

“This Court, thus, holds that though recovery of the excess payment from the retired

person from his retiral dues is not permissible, but the retired person cannot claim the pensionary relief for the current months on the basis of his last drawn salary which, in fact, was not admissible to him on the date of his retirement.

I my view, State cannot be burdened with such recurring liability for payment of pension for the current months by giving effect to such erroneous pay fixation even after such error is detected. However, I make it clear that any amount of money paid to any retired person on account of pension in excess of his entitlement cannot be recovered from him.

As such, this Court directs the concerned authority to ascertain the entitlement of the petitioner with regard to his pay and allowance which was admissible to him as per law as on the date of his retirement and calculate the admissible pensionary relief payable accordingly and pay the same to the petitioner.

The concerned authority is also directed to go on paying the current pension regularly at the rate to be fixed in the manner as aforesaid.

The writ petition is, this, disposed of.”

He then refers to the communication dated **March 13, 2012, Annexure P-6** at **page 32** to the writ petition and submits that, the respondent No. 5 has already communicated the respondent No. 6 to disburse the overdrawal amount along with interest to the concerned petitioner following the said order dated **February 10, 2012.**

Learned counsel for the petitioner submits that, till date the payment has not been released. To implement the said direction of the respondent No. 5

through the respondent No. 6 the instant writ petition has been filed.

After considering the submissions made on behalf of the parties and on perusal of the materials on record it appears that, the previous order of the co-ordinate bench dated **February 10, 2012** has attained its finality and is binding upon the parties as there was no challenge from the said order. In as much as, the respondent No. 5 in compliance of the direction made in the said order requested the respondent No. 6 to release the payment. Still the payment has not been released by respondent No. 6.

In view of the above, the respondent No. 6 is directed to carry out the request made by the respondent No. 5 in the said communication dated **March 13, 2012** in the light of the said order of the co-ordinate bench dated **February 10, 2012** and must and should make the necessary payment to the petitioner payable to him along with interest @ **8% per annum** since **March 13, 2012** till the date of the actual tendering of the amount to the petitioner and not thereafter positively within a period of **four weeks** from the date of communication of this order. The petitioner shall furnish its bank account details to the respondent No. 6.

On the above terms, this writ petition being **W.P.A. 31291 of 2014** stands disposed.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)