04.05.2023
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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

WPA 571 of 2023

Usha Rani Ray
versus
The State of West Bengal & Ors.

Mr. Debajit Kundu
...For the Petitioner.

The petitioner was an Assistant Teacher of a high school. He/She retired from service on 30.11.2008. The Pension Payment Order (PPO) was issued in favour of the petitioner on 20.12.2011. The petitioner received his/her retiral benefits on 03.03.2012.

The petitioner prays for interest on account of the delayed payment of the retiral benefits.

I have heard the learned counsel for the parties and considered the materials on record as also the orders passed by this Court in similar facts.

An employee immediately on his/her retirement becomes entitled to his/her retiral benefits. In order to provide the retired employee with all benefits in time, the processing of his/her pension papers starts six months before the date of his/her retirement.

It is also a settled position of law that the right of a retired employee to get his/her retiral dues on the date of attaining superannuation is a valuable right which accrues in his/her favour on the date of his/her attaining superannuation. Further, gratuity and pension are no more considered to be a bounty to be handed out by the State at its whim. An employee has a statutory right to receive gratuity and pension upon retirement. If payment of such gratuity and pension is delayed the retired employee is surely entitled to get interest for such delayed payment in view of the provisions of Payment of Gratuity Act, 1972 and treating arrears of pension on similar line. The interest is also payable as the retired employee is deprived from the benefit of the money during the period of delay.

In the present case, it was the bounden duty of the State to disburse the gratuity and pension amount on the due date. If it has failed to do so and has released such amount after unexplained delay, it is obliged to pay interest to the retired employee. Pension and gratuity are welfare provisions aimed at maintaining the life of a retired employee and his/her dependents. This is compensatory in nature.

The Hon'ble Supreme Court in the judgment reported in **(2008) 3 SCC 44 (S.K. Dua vs. State of Haryana & Anr.)** has clearly said that in absence of any statutory rules, administrative instructions or guidelines, an employee can claim interest on his retiral benefits which includes gratuity under Part III of the Constitution relying on Articles 14, 19 and 21 of the

Constitution. In the instant case, there are no efficacies statutory rules, administrative instruction or guidelines for the claim made. The writ petition is thus maintainable.

The issue that falls for consideration in this case is the delay in approaching the Court by filing this writ petition for interest on delayed payment of retiral benefits. In the present case, it is noticed that the petitioner retired from service on 30.11.2008. The PPO was issued on 20.12.2011 and was paid the retiral benefits on 03.03.2012. The writ petition has been filed on 9th March, 2023 i.e. after 11 (eleven) years.

The issue as to delay in approaching the Court for retiral benefits which includes claim for interest due to delayed payment of retiral benefits has been considered in details in **2008 (8) SCC 648 [Union of India & Ors. vs. Tarsem Singh]**. In the said judgment it has been held (SCC page-651, Para-7);

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by a application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of

any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

The ratio laid down in Tarsem Singh (supra) has been followed in **Asger Ibrahim Amin vs. Life Insurance Corporation of India** reported in **2016 (13) SCC 797**.

The ratio laid down in Tarsem Singh (supra) and Asger Ibrahim (supra) has been considered and approved in two very recent judgments reported in **2022 (2) SCC 301 [Chairman, State Bank of India & Anr. vs. M.J. James]** and **2022 SCC OnLine SC 461 [Rushibhai Jagdishbhai Pathak vs. Bhavnagar Municipal Corporation]**.

It will appear from all these judgments that the only exceptions curved out to prevent rejection of the writ petition with regard to a belated service related claim is continuing wrong which again should not create third party rights due to delays. An elucidation of continuing wrong has been given in the judgment reported in **1995 (5) SCC 628 [M.R Gupta vs. Union of India]**. In M.R Gupta (supra) it has been held that so long as the employee is in service, fresh cause of action would arise every month when they are paid their salary on the basis of a wrong computation made contrary to the rules.

It has been held in **AIR 1959 SC 798 [Balkrishna Savalram Pujari & Ors. vs. Shree Dnyaneshwar Maharaj Sansthan]** and approved in the judgments referred to hereinabove that continuing wrong is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If on the other hand the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue.

In the instant case the wrong was committed when the retiral benefits were paid belatedly, without providing for interest for such delayed payment. The wrongful act which caused the injury occurred on the date of payment of the retiral benefits. There is as such no continuing wrong even though the damage resulting from such act may continue. The petitioner has approached the Court after a long delay.

The right to sue in favour of the petitioner accrued on the date when the retiral benefits were paid. Such right was not deferred even if there are successive breaches as held in **2016 (13) SCC 1 [Sundaram Finance vs. Noorjahan Beevi & Anr.]**.

In view of the above, this Court is not inclined to exercise jurisdiction of mandamus or direction of like nature in the matter and grant any relief in favour of the petitioner.

The writ petition is dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arindam Mukherjee, J.)