OD – 13

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BEFORE :
THE HON'BLE JUSTICE LAPITA BANERJI

WPO/394/2023

KHOKAN MAJUMDAR AND ORS.
-Versus-
THE STATE OF WEST BENGAL AND ORS.

For Petitioner :	:	Mr. Debdutta Basu, Advocate
For State Respondent	*:*	Mr. Naba Kumar Das, Advocate Mr. Sutanu Chakraborty, Advocate
For Respondent Corporation	:	Ms.Angona Dutta, Advocate Ms. Sristi Paul, Advocate
Hearing concluded on	:	21.04.2023
Judgement on	:	21.04.2023

The Court : The writ petitioners have prayed for release of interest on account of arrears of refund of Pay and Allowance (ROPA). 1998 benefits. Vide Memorandums dated June 23, 2000 and July 21, 2000 the writ petitioners were assured by the West Bengal Transport Corporation Limited (WBTCL) formerly known as the Calcutta Tramways Company (1978) Limited that the arrears of ROPA benefits would be paid to the employees of the corporation with effect from November 1, 2002 in five annual instalments along with interest to be calculated from April 1, 2000 at the same rate as admissible in respect of accumulation in the general provident fund. The arrears of ROPA benefits were not given within the stipulated period as assured under Memorandums dated June 23, 2000 and July 21, 2000.

The writ petitioners no.1 to 10 have retired from service on several dates from 2009 till 2022. The writ petitioners no.11 to 18 are still in service.

Mr. Basu, learned Counsel appearing for the petitioners, submits that he is covered by several judgements passed by Co-ordinate Benches of this Hon'ble Court and also the Hon'ble Division Bench on the issue that the period of limitation under Limitation Act, 1963 is not applicable to the writ petitioners. He cites a judgement reported in 2022(2) SCC 301 **(Chairman, State Bank of India & Anr. Vs. M.J. James)** in support of his contention that the doctrine of acquiescence is not applicable in the case of present writ petitioners. Acquiescence does not mean standing by while violation of a right is in progress. Acquiescence means of assent after the violation has been completed once the claimant has become aware of it. In such a case it would be unfair/unjust to give the claimant remedy which he by his conduct has waived.

He submits that if a statutory authority has not performed its duty within a reasonable time, it cannot justify the same by taking the plea that the person who has been deprived of his rights has not approached the appropriate forum for relief by relying on (**Ram Chand Vs. Union of India)** reported in 1994 (1) SCC 44.

He also relies on a Division Bench judgement of this Hon'ble Court passed in FMA 3942 of 2016 on January 5, 2022 (**Amarnath Tiwari & Ors. Vs. State of West Bengal & Ors.**). The Hon'ble Division Bench held that the writ petitioners claim for interest flows from a decision taken by the Government of West Bengal which was implemented by the respondent corporation. There was no dispute with regard to the entitlement of the interest and the period for which the interest is to be paid. In such case the respondent company cannot non-suit the writ petitioners/appellants because they have approached the respondent belatedly. Since the entitlement of the writ petitioners for payment of interest attained a statutory colour as it was due to a policy decision of the government, the respondent company could not wriggle out their liability. Therefore, the Hon'ble Division Bench allowed the interest to be paid to the appellants/writ petitioners even though they had approached the authorities/court belatedly.

Ms. Chattaraj, learned Counsel appearing on behalf of the respondent corporation, relies on a decision reported in 2022 SCC OnLine SC 641 (**Rushibhai Jagdishbhai Pathak Vs. Bhavnagar Municipal Corporation**) for the proposition that the delay and laches defeat may the claim of the writ petitioners.

Considering the rival submissions of the parties and the materials on record, this Court is of the view that the assurance of the corporation has resulted in the writ petitioners' claim having a statutory colour. A beneficial reference may be made to a judgement passed in FMA 3942 of 2016 on

January 5, 2022 (**Amarnath Tiwari & Ors. Vs. State of West Bengal & Ors.**). The principal of limitation is strictly not applicable in case of a writ petition. This Court relies on a judgement of the Hon'ble Apex Court reported in AIR 2022 SC 4538 **(State of Rajasthan Vs. O.P. Gupta)** in coming to the finding that the difficulties of a retired employee cannot be ignored or not considered in holding that since the writ petitioners have not approached the Court within three years from the date of retirement/severance of the employee-employer relationship, the writ petition is not maintainable on the ground of delay and laches. The corporation has assured its employees that the arrears would be granted with effect from November 1, 2022 in five equal instalments and failed to perform their statutory obligations in terms of the notification issued by the Government of West Bengal. The corporation failed to give its employees benefits of ROPA 1998 and now cannot defeat the claim of the writ petitioners by arguing that some of the writ petitioners have approached the Hon'ble Court three years after their retirement.

The case of **Rushibhai Jagdishbhai Pathak** (supra) is completely distinguishable on facts. In that case their higher scale of pay in the next promotional post was given to the writ petitioners with effect from January 1, 2006 on the undertaking that the appellants/writ petitioners *shall give up such **benefits** made available under the Scheme in case of denial of regular promotion to the employee*. The ***benefits*** which were given on and from March 1, 2006 were withdrawn from October 28, 2010. Nearly after seven years in September 2017 the appellants/writ petitioners filed writ petitions seeking to challenge the order dated October 28, 2010 whereby the higher scale of pay to the next promotional post was withdrawn.

In such a case the Apex Court held that the interest on arrears of the higher scale of pay would be payable from September, 2017. The Apex Court held that the Hon'ble Division Bench was wrong to grant interest from the date of judgment passed by the Single Judge on July 31, 2018. The appellants in consonance with the case law of **Union of India Vs. Tarsem Singh** reported in (2008) 8 SCC 648 would be entitled to arrears of the higher scale of pay for three years prior to the filing of the writ petition along with interest at the rate of 7% per annum with effect from September 1, 2017 (when the writ petition was filed). This Court fails to see how the said case is applicable to the facts of the present case. There is no question of withdrawal of any wrongful benefits purportedly given to the petitioners and the writ petitioners failing to complain of such withdrawal for almost about 7 years.

In the present case, the respondent corporation has failed to give the benefits to the writ petitioners as assured by them under their own office memorandums dated June 23, 2000 and July 21, 2000 pursuant to the Revision of Pay and Allowances 1998 by the Government of West Bengal. There is no dispute with regard to entitlement of the petitioners in respect of the entitlement to the payment of arrears and belated disbursal of the same.

In the light of the discussions above, this Court directs interest at the rate of 6% per annum to be paid to the petitioners from the dates on which the instalments are to be paid to them from November 1, 2020 till such time the said arrears were actually paid to the writ petitioners within three months from date.

In case of default of payment within three months, the rate of interest will stand enhanced to 7% per annum.

With the directions aforesaid **WPO No. 394 of 2023** 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.

All parties to act on a server copy of this order downloaded from the official website of this Court.

(LAPITA BANERJI, J.)

S.Das/snn.