

15.04.2024
Court No.13
Item Nos.21 to 115
AP

WPA 2889 of 2024
Swapan Kumar Chakraborty
-Versus-
The State of West Bengal & Ors.
With
WPA 2366 of 2024
Sitaram Adhikary
-Versus-
The State of West Bengal & Ors.
With
WPA 2372 of 2024
Ranajit Kumar Mandal
-Versus-
The State of West Bengal & Ors.
With
WPA 2379 of 2024
Gaurhari Chandra
-Versus-
The State of West Bengal & Ors.
With
WPA 2381 of 2024
Aloke Nath Goswami
-Versus-
The State of West Bengal & Ors.
With
WPA 2382 of 2024
Anil Kumar Maji
-Versus-
The State of West Bengal & Ors.
With
WPA 2384 of 2024
Sk. Mokbul Rahaman
-Versus-
The State of West Bengal & Ors.
With
WPA 2386 of 2024
Mira Chakraborty
-Versus-
The State of West Bengal & Ors.
With
WPA 2387 of 2024
Mohanlal Ghosh
-Versus-
The State of West Bengal & Ors.
With
WPA 2388 of 2024
Kasinath Pal
-Versus-
The State of West Bengal & Ors.
With
WPA 2392 of 2024
Mohanlal Das

-Versus-
The State of West Bengal & Ors.
With
WPA 2394 of 2024
Rabindra Nath Marik
-Versus-
The State of West Bengal & Ors.
With
WPA 2398 of 2024
Parula Mudi
-Versus-
The State of West Bengal & Ors.
With
WPA 2401 of 2024
Krishna Pada Panchhal
-Versus-
The State of West Bengal & Ors.
With
WPA 2402 of 2024
Jubaraj Dalui
-Versus-
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With
WPA 2405 of 2024
Lakshan Chandra Pramanik
-Versus-
The State of West Bengal & Ors.
With
WPA 2406 of 2024
Pallabi Jati (Dhara)
-Versus-
The State of West Bengal & Ors.
With
WPA 2409 of 2024
Hrishikes Mandal
-Versus-
The State of West Bengal & Ors.
With
WPA 2410 of 2024
Namita Santra
-Versus-
The State of West Bengal & Ors.
With
WPA 2412 of 2024
Samatul Chandra Ghosh
-Versus-
The State of West Bengal & Ors.
With
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Sanat Kumar Das
-Versus-
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With
WPA 2415 of 2024
Nirmal Chandra Santra

-Versus-
The State of West Bengal & Ors.
With
WPA 2418 of 2024
Kamala Mal
-Versus-
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With
WPA 2422 of 2024
Samarendra Nath Panja
-Versus-
The State of West Bengal & Ors.
With
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Jagannath Meur
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Prasad Chandra Das
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With
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The State of West Bengal & Ors.
With
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-Versus-
The State of West Bengal & Ors.
With
WPA 2525 of 2024
Arati Ghosh (Kauri)

-Versus-
The State of West Bengal & Ors.
With
WPA 2527 of 2024
Prahlad Chandra Bodak
-Versus-
The State of West Bengal & Ors.
With
WPA 2553 of 2024
Swapan Kumar Dhara
-Versus-
The State of West Bengal & Ors.
With
WPA 2560 of 2024
Ramsadaya Chongder
-Versus-
The State of West Bengal & Ors.
With
WPA 2748 of 2024
Sabera Khatun
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The State of West Bengal & Ors.
With
WPA 2866 of 2024
Sushil Kumar Mukherjee
-Versus-
The State of West Bengal & Ors.
With
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Ratna Rani Datta
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With
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Bharati Sanyal (Siddhanta)
-Versus-
The State of West Bengal & Ors.
With
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With
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Bhaskar Chandra Panda
-Versus-
The State of West Bengal & Ors.
With
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With
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The State of West Bengal & Ors.
With
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With
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The State of West Bengal & Ors.
With
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Sandhyarani Kaity (Karmakar)
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With
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Niti Chandra Mondal
-Versus-
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With
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Sris Chandra Kundu
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With
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Malati Koley
-Versus-
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With
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Tarun Acharya
-Versus-
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With
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Kshitish Mandal
-Versus-
The State of West Bengal & Ors.
With
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Sitima Saha
-Versus-
The State of West Bengal & Ors.
With
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Rabindranath Bhattacharya

-Versus-
The State of West Bengal & Ors.
With
WPA 2962 of 2024
Ranjit Kumar Mallick
-Versus-
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With
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Gita Ghosh
-Versus-
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With
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Manick Chandra Charchari
-Versus-
The State of West Bengal & Ors.
With
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Satyaban Khan
-Versus-
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With
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Arati Bera
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With
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Sudhir Chandra Majhi
-Versus-
The State of West Bengal & Ors.
With
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Usha Gupta Bhaya
-Versus-
The State of West Bengal & Ors.
With
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Nimai Chandra Samanta
-Versus-
The State of West Bengal & Ors.
With
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Malati Rani Sarkar
-Versus-
The State of West Bengal & Ors.
With
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Hemlata Barla
-Versus-
The State of West Bengal & Ors.
With
WPA 2982 of 2024
Krishna Sarka (Mondal)

-Versus-
The State of West Bengal & Ors.
With
WPA 2984 of 2024
Taraknath Chakraborty
-Versus-
The State of West Bengal & Ors.
With
WPA 2986 of 2024
Susil Kumar Pati
-Versus-
The State of West Bengal & Ors.
With
WPA 3062 of 2024
Nilima Bhattacharjee
-Versus-
The State of West Bengal & Ors.
With
WPA 3068 of 2024
Minati Bej
-Versus-
The State of West Bengal & Ors.
With
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Dhiren Chandra Mandal
-Versus-
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With
WPA 3353 of 2024
Gopal Chandra Bandyopadhyaya
-Versus-
The State of West Bengal & Ors.
With
WPA 3361 of 2024
Nanigopal Chakraborty
-Versus-
The State of West Bengal & Ors.
With
WPA 3370 of 2024
Rekha Dutta
-Versus-
The State of West Bengal & Ors.
With
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Moslehuddin Ahmed
-Versus-
The State of West Bengal & Ors.
With
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Basanti Parui
-Versus-
The State of West Bengal & Ors.
With
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Nilima Roy

-Versus-
The State of West Bengal & Ors.
With
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Debi Adhikari
-Versus-
The State of West Bengal & Ors.
With
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Naryan Chandra Roy
-Versus-
The State of West Bengal & Ors.
With
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Upendra Nath Ekka
-Versus-
The State of West Bengal & Ors.
With
WPA 3405 of 2024
Altaf Hossain
-Versus-
The State of West Bengal & Ors.
With
WPA 3407 of 2024
Sunity Ray
-Versus-
The State of West Bengal & Ors.
With
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Chabi Rani Rang
-Versus-
The State of West Bengal & Ors.
With
WPA 3414 of 2024
Rashmani Panja
-Versus-
The State of West Bengal & Ors.
With
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Ashalata Kar
-Versus-
The State of West Bengal & Ors.
With
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Swapan Chatterjee
-Versus-
The State of West Bengal & Ors.
With
WPA 3424 of 2024
Md. Kalimuddin
-Versus-
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With
WPA 3426 of 2024
Kamala Rani Parua

-Versus-
The State of West Bengal & Ors.
With
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Mahadev Mukhopadhyay
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With
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Saraswati Mondal
-Versus-
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With
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Kishori Mohon Chowhdury
-Versus-
The State of West Bengal & Ors.
With
WPA 3464 of 2024
Nural Islam
-Versus-
The State of West Bengal & Ors.
With
WPA 3471 of 2024
Bithika Mahapatra
-Versus-
The State of West Bengal & Ors.
With
WPA 3475 of 2024
Dibakar Goswami
-Versus-
The State of West Bengal & Ors.

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89 to 91 and 114 to 115.

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Ms. Saheli Sen

Mr. Sandip Chattopadhyay
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Ms. Indrani Nandi
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Mr. Jaydip Basu
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Mr. Sanatan Panja
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Mr. Avirup Mondal
Ms. Anima Das Chakraborty
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1. Mr. Kishore Dutta, learned Advocate General has made submissions in reply to the point of res judicata.

2. Mr. Subir Sanyal's submission as to why res judicata is not a bar in the instant proceedings or for that matter even Order 2 Rule 2 of the Code of Civil Procedure, is sought to be answered by the learned Advocate General on the following terms:

3. It is submitted that the 5th Explanation to Section 11 of the CPC is required to be understood to prevent multiplicity of judicial proceedings and discourage frivolous and illegal claims already decided by and between the parties. The parties in the instant case are in fact similar.

4. In the **Md. Abdul Ghani Vs. State of West Bengal and Ors.** decision, which was rendered on 30th September, 2019 clarifying that notwithstanding a subsequent date of refund of employer share of provident fund, the employees

would be entitled pension from the date after the date of retirement. The petitioner could have raised the payment of interest thereafter which they did not.

5. Para 48 of the **Md. Abdul Ghani (supra)** is specifically referred by the Learned Advocate General. It is submitted that the petitioners had specifically conceded any claim of interest on the arrears of pension.

6. The petitioners cannot, therefore, make any further claims of interest post the date of refund till the date of actual payment.

7. Mr. Dutta has then referred to the pleadings in **WPA 28559 of 2015 (Swapan Kumar Chakraborty Vs. The State of West Bengal & Ors.)**, similar to all other writ petitions particularly Para 16 to 18 and 20 to 22.

8. It is submitted that prayer (c) of the said **WPA 28559 of 2015 (supra)** read with aforesaid paragraphs would thereunder indicate that the petitioners claim for interest on the period after the date of refund also has been made in the said writ petition and not considered in the order dated 9th February, 2022. The prayer for interest is

therefore, barred under the 5th Explanation to Section 11 of the Code of Civil Procedure, 1908.

9. The petitioners having been issued PPO on 9th March, 2023 and paid arrears on 27th March, 2023 are, therefore, not entitled to claim any interest, not only on the principle of res judicata but also by applying the Order 2 Rule 2 of the Code of Civil Procedure. No leave has been reserved to the petitioners under Order 2 Rule 2 of the Code by any Court in any of the earlier proceedings.

10. This Court has carefully considered the arguments advanced by Mr. Sanyal on behalf of the petitioners and Mr. Dutta, learned Advocate General for the State.

11. Indeed as pointed out by the learned Advocate General there has been an erroneous recording in Para 4(a) of the order dated 10th April, 2024. The **Md. Abdul Ghani (supra)** decision was rendered on 30th September, 2019 much before the decision of a Coordinate Bench dated 9th February, 2022. Para 4(a) of the order dated 10th April 2024 shall stand deleted.

12. This Court notices that a plain reading of Paragraphs 20 to 22 of **WPA 28559 of 2015**

(supra), which is set out hereunder, would indicate that the prayer was for interest from the date after the date of retirement:

“20. Your petitioner submits that the petitioner retired from service on 30.04.2010. He has received the CPF amount together with interest calculated upto the date of his retirement. Now, as per the Notification dated 13th June, 2014, he had returned the employer’s share of the said CPF amount with interest and additional interest upto the date of exercising option. Accordingly, the petitioner has exercised option as per the said notification on 07.07.2014 and returned the employer’s share with interest calculated upto 31.07.2014, but he has not been allowed to enjoy the pensionary benefit with effect from the date of his retirement which is unreasonable and unsustainable in law.

21. Your petitioner submits that the petitioner retired from service on 30.04.2010 on attaining the age of superannuation after rendering about 33 years of service as Assistant Teacher in a primary school but by the impugned decision of the State authorities, the petitioner has been deprived from getting pension-cum-gratuity from the date of refund of the employers’ share i.e. 22.08.2014, although, he is entitled to get pension from the date following the date of his retirement. Such decision of the State authorities is totally bad, illegal and unlawful and contrary to the relevant provisions of the Death-Cum-Retirement Benefit Scheme, 1981.

22. Your petitioner submits that considering the facts and circumstances of the case as stated above unless an appropriate order and/or direction is passed by this Hon’ble Court in exercising in its writ jurisdiction by directing the respondent State authorities to sanction the pension and gratuity in favour of the petitioner from the date following the date

of his retirement as per the Death-Cum-Retirement Benefit Scheme, 1981 and release all arrears pension in accordance with law, your petitioner will suffer irreparable loss, injury and prejudice.”

13. Prayer (c) of writ petition is also set out hereunder:-

“c) A writ in the nature of Mandamus directing the respondent no.4 viz. the Director of Pension, Provident Fund & Group Insurance, West Bengal to release the arrear pension in reference to the Pension Payment Order dated 6.5.2015 for the period from 01.5.2010 till 21.08.2014 together with interest @10% per annum till the date of such payment is made;”

14. In other words, the interest was being prayed for in 2015, on the period from the date of superannuation. The writ petition was filed prior to the decision of **Md. Abdul Ghani (supra)**. It has been argued by the State that prayer for post refund interest must also be deemed to have been made.

15. It is however noticed by this Court that Categorization of any post or pre-refund interest as argued by the State was not made in the said writ petition. The petitioners made an omnibus prayer for interest after superannuation.

16. However, it is important to notice the stand of the petitioners before the Special Bench in **Md. Abdul Ghani (supra)**. They specifically conceded

that they were not claiming interest on the arrears from the date after the date of superannuation till the date of refund. It was this concession, which has been recorded by the Special Bench in **Md. Abdul Ghani (supra)**.

17. This would, therefore, cast an automatic responsibility on the State to immediately after the clarification on 30th September, 2019 in **Md. Abdul Ghani (supra)** to issue PPO and pay arrears within a reasonable time i.e. a month or two at best after the said decision. This was not done. PPOs were issued only in March, 2023 and payment made soon thereafter.

18. The decision in **WPA 28559 of 2015 (supra)** followed another decision of a Coordinate Bench in **WPA 964 of 2022 (Sitala Mandal (Chaudhuri) Vs. The State of West Bengal & Ors.)** dated 8th February, 2022. It would be relevant for the purpose of this decision to set out two paragraphs placed by the learned Advocate General of the said decision:

“According to the petitioner, pension ought to have been released on and from the next date of retirement and not from the date of refund of the employer’s share of contribution.

In support of the aforesaid stand the petitioner has relied upon the judgement

delivered by the Court in ***District Inspector of Schools (S.E.), Kolkata -vs- Abhijit Baidya*** reported in **2013 (3) CHN (CAL) 711** and the judgement delivered on 30th September, 2019 by the Special Bench of this Court in the matter of ***Md. Abdul Ghani -vs- State of West Bengal & Ors.*** (GA No.64 of 2018, APOT No.104 of 2006, APO No.121 of 207, GA No.627 of 2006, WP No.1528 of 2002).”

19. A conjoint reading of the prayers of the petitioners of the pleadings in **WPA 28559 of 2015 (supra)** and the prayer (c) thereunder read with the order dated 9th February, 2022 in the said writ petition and the paragraph of the decision of **Sitala Mandal (Chaudhuri) (supra)** hereinabove would indicate as follows.

20. The writ petition by **Swapan Kumar Chakraborty (supra)** was filed in the year 2015 even before the decision of **Md. Abdul Ghani (supra)**. The writ petition was disposed of on 9th February, 2022 after the clarification decision of **Md. Abdul Ghani (supra)**.

21. Even the decision in the writ petition in the case of **Sitala Mandal (Chaudhuri) (supra)** which is filed in the year 2022, (portions of the order set out hereinabove) were rendered after the decision of **Md. Abdul Ghani (supra)**.

22. The writ petitioners must have been under severe financial distress i.e. having made the

refund for switch over from CPF to GPF in the year 2014 and were waiting for five long years firstly until the clarification in **Md. Abdul Ghani (supra)** and thereafter for three more years until the decision of **Sitala Mandal (Chaudhuri) (supra)** and **Swapn Kumar Chakraborty (supra)** were rendered. They were desperate. They just wanted release of arrears of pension. A large number of writ petitioners might have had to borrow sums of money for the aforesaid refund made in the year 2014 long after the retirement.

23. One cannot but take judicial notice of the fact that a lot of writ petitioners must have either marriageable daughters or children seeking higher education on which they may have spend their CPF amounts. The spiraling cost of living has not even otherwise spared the petitioners from the date of their retirement. They must have exhausted their little savings under the CPF by the time they were required to make refund in the year 2014.

24. It is now well-settled that provisions of the Code of Civil Procedure are not applicable in letter and word to writ petitions under Article 226 and 32 of the Constitution of India.

25. The principle of *res judicata* has been applied to writ petitions as held by the Hon'ble Supreme Court in paragraphs 8 to 11 in **P. Bandopadhyay vs. Union of India** reported in **(2019) 13 SCC 42**.

26. However, in **M. Nagabhushana vs. State of Karnataka** reported in **(2011) 3 SCC 408**, it has been held at paragraphs 13, 17 and 24 as follows:-

“13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of *res judicata* has been evolved to prevent such an anarchy. That is why it is perceived that the plea of *res judicata* is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties.

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17. It may be noted in this context that while applying the principles of *res judicata* the court should not be hampered by any technical rules of interpretation. It has been very categorically opined by Sir Lawrence Jenkins that:

“... the application of the rule by courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law.”

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24. In coming to the aforementioned finding, this Court relied on *The Supreme Court Practice, 1995* published by Sweet & Maxwell (p. 344). The relevant principles laid down in the aforesaid practice and which have been accepted by this Court are as follows: (*K.K. Modi case*, SCC p. 592, para 43)

“43. ... ‘This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a

proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.’ ”

27. In **Dwarka Nath vs. ITO** reported in **(1965)**

3 SCR 536 at paragraph 4, it was held as follows:

“4. ...This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression “nature”, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.”

28. It follows from the aforesaid decisions that grant of a relief is a deserving case under Article 226 is not restricted by technicalities. The writ Court could, in a given case, grant relief notwithstanding the principles of *res judicata* to deserving and *bona fide* weak litigants against the State. The bar must, however, be applied to unscrupulous litigants seeking to abuse the process of law. Vexations and harassive litigation must also be discouraged by applying the

principle of *res judicata*. Rich and oppressive litigants must be discouraged from harassing the State and the opponents by stringent application of the principles of *res judicata*.

29. In the instant case, it is firstly seen that the prayer for interest in the arrear of pension post the refund has not been specifically made by the retired teachers in any of the writ petitions that have been disposed of. The said teachers have already given up a claim for interest from the date of superannuation till the date of refund of the portion of CPF. The State on the contrary has been unfair and arbitrary in not issuing PPOs and making payment, for 4 long years after the date of refund, causing immense hardship to the petitioners.

30. Therefore, even assuming though not admitting that the principles of *res judicata* may be applicable, this Court views the same as a technicality and a mere procedural hindrance, which should not stand in the way of granting deserving relief to weak and oppressed retired teachers in the State.

31. Order 2 Rule 2 of the Code of Civil Procedure, 1908 would not be applicable to writ

petitions. This has been decided in the case of **Brahma Singh vs. Union of India** reported in **(2020) 12 SCC 762**. At paragraph 10, it has been held as follows:

“10. In relation to applicability of Order 2 Rule 2 of the Civil Procedure Code, 1908 this Court has held in *Devendra Pratap Narain Rai Sharma v. State of U.P.* as follows: (AIR p. 1337, para 12)

“12. ...The bar of Order 2 Rule 2 of the Civil Procedure Code on which the High Court apparently relied may not apply to a petition for a high prerogative writ under Article 226 of the Constitution, but the High Court having disallowed the claim of the appellant for salary prior to the date of the suit, we do not think that we would be justified in interfering with the exercise of its discretion by the High Court.”

Placing reliance on *Devendra Pratap Narain Rai Sharma*, this Court in *Gulabchand Chhotalal Parikh v. State of Gujarat* in relation to Order 2 Rule 2 held as follows: (AIR p. 1159, para 26)

“26. ... By its very language, these provisions do not apply to the contents of a writ petition and consequently do not apply to the contents of a subsequent suit.” ”

32. The aforesaid dicta therefore, clearly spells out that relief under Article 226 to deserving litigants cannot be restricted or circumscribed by technicalities of procedure.

33. In the backdrop of the above and the casual attitude of the State in compelling the petitioners to approach Court either by way of fresh writ petitions or revival of their earlier filed writ petitions post the decision in **Md. Abdul Ghani (supra)** must be addressed with appropriate relief. A retired person has no other source of income except his pension. No pension amount in this

country, is enough or commensurately address the spiraling rate of inflation and cost of living.

34. This Court, therefore, holds that the State was obliged to at least within a period of one month from 30th September, 2019 pay all arrears of pension from the date after the date of retirement till September, 2019, which they did not. The writ petitions have conceded in the **Md. Abdul Ghani (supra)** decision that they are not claiming interest on the arrears of pension from the date after the date of retirement till the date of actual refund.

35. The State was given a concession and the writ petitioners were already put to a disadvantage. The disadvantage being the State having user of the funds of the writ petitioners from 2014 (the date of refund) till the year 2019, and the writ petitioners being deprived of the same.

36. In the backdrop of the above, and the discussion on the right of interest on the delayed payment of arrear pension, available in this Court's order dated 10th March, 2024, this Court holds that writ petitioners and each of them shall be entitled to interest at the rate of 8% per

annum, for the **period from 1st November 2019** *(one month after the decision of Md. Abdul Ghani (supra) i.e. 30th September, 2019)* **till the date of issuance of PPO, on all arrears of pension** *(from the date of superannuation).*

37. It is ordered that such interest be paid within 2 months from date. In default, the rate of interest shall stand increased to 11 %.

38. Accordingly, the writ petitions shall stand allowed and disposed of.

39. After the order is dictated and as already indicated by the learned Advocate General on 10th April, 2024, the State makes a prayer for stay of operation of the aforesaid order. The prayer is considered and declined.

40. There shall be no order as to costs.

41. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)