05.02.2024
Sl No.11
Court No.8
(gc)

MAT 449 of 2023
CAN 1 of 2023
CAN 2 of 2023

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

Mr. Amal Kr. Sen, A.G.P.,
Ms. Sahina Sumi
...for the Appellants.
Mr. Subrata Das
...for the Respondent No.1.

Re: CAN 1 of 2023

1. There is a delay of 8 days in filing the memorandum of appeal.
2. Sufficient cause being shown for not being able to file the memorandum of appeal within the period of limitation.
3. The delay of 8 days in filing the memorandum of appeal is condoned.
4. Accordingly, the application for condonation of delay is allowed and disposed of.

Re: MAT 449 of 2023
CAN 2 of 2023

5. The appeal is arising out of an order passed by the learned Single Judge on 10th January, 2023 in a writ petition in which the writ petitioner has prayed for payment of arrears from November 6, 2011 till

October 3, 2017 along with interest @ 18% per annum. Indisputably, the father of the writ petitioner was an employee of North Bengal State Transport Corporation (in short "NBSTC"). The father of the petitioner died-in-harness on September 26, 2010. The first wife of the deceased employee 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, that is, on or about November 5, 2019. The appellants are the instrumentality of the State. Surprisingly, the order directing the payment of arrear pension for the aforesaid period without interest has been assailed by the State authorities on the ground of limitation.

6. Mr. Amal Kumar Sen, learned A.G.P. appearing on behalf of the employer/NBSTC submits that the writ petition is liable to be dismissed on the ground of delay and laches. In any event, the claim could not have been allowed beyond the period of three days prior to the date of filing of the writ petition and in this regard Mr. Sen has relied upon two

decisions of the Hon'ble Supreme Court, namely, ***(i) Union of India & Ors. Vs. Tarsem Singh*** reported at ***(2008) 8 SCC 648*** and ***(ii) State of Madhya Pradesh & Ors. Vs. Yogendra Shrivastava*** reported at ***(2010) 12 SCC 538***. It is submitted that both the decisions have categorically held that consequential relief of payment of arrear will have to be restricted to a period of three years prior to the date of filing of the original application.

7. The learned Counsel for the writ petitioner, however, supports the order and submits that it is his legitimate claim which cannot be denied by the State or its instrumentality.

8. We have read the judgment of the learned Single Judge carefully where Tarsem Singh (Supra) was considered by her Ladyship in the following words:-

> *"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."*

9. The other judgment was not cited and hence not discussed in the said judgment. The judgments cannot be read as a statute. It has to be understood in the context in which it was delivered. In the instant case, the petitioner was only 19 years when the first wife of the deceased died. The State could not explain as to how they stopped payment of family pension after February 10, 2011. The family pension is a statutory right. It is a right which the employer acquired during his service career. It is a vested right accrued in favour of the employee and would be extended to its family. It is not a bounty. ***(See Punjab State Cooperative Agricultural Development Bank Ltd. Vs. Registrar, Cooperative Societies & Ors.*** reported at ***2022 (4) SCC 363)***. It is a benefit earned by reason of successful completion of service tenure. The relevant rules provided for family pension. The entitlement of family pension to the heirs of the deceased is not denied. It is a continuous cause of action. ***(See M.L. Patil Vs. State of Goa*** reported at ***2023 (1) SCC 660)***. It is settled law that the Government should not take the plea of limitation to

defeat a legitimate right. The Government is required to as a model employer. The Government requiring 19 years' old boy to immediately file an application informing the death during mourning or immediately thereafter and only then the limitation would stop would not be expected from a model employer. Government has also a social responsibility. The Corporation is not denying that this money ought to have been paid to the family of the deceased and the writ petitioner is entitled to the said amount. The learned Single Judge because of the belated application has denied interest. It is not a question of payment of arrear salary. It is the question of payment of financial benefits consequent upon the retirement and death to which the writ petitioner is entitled to in law and in our view, the law of limitation should not stand in the way in this particular case having regard to the facts of this case.

10. It is not in dispute that under the relevant rules the said amount was payable to the petitioner soon after the death of the first wife till November, 2019.

11. The family pension provisions should be given a liberal interpretation and the

benefit of such pension should not be easily denied as it is a beneficial legislation.

12. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.

13. The appeal fails.

14. Accordingly, the appeal and the application stand dismissed.

15. However, there shall be no order as to costs.

16. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.) **(Soumen Sen, J.)**