

12.11.2024
Item No.17
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IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

WPA/2349/2024

SRI AKHIL CHANDRA SARKAR
VS
THE STATE OF WEST BENGAL & ORS.

Mr. Kumar Shantanu,
. . . for the petitioner.

Mr. Subir Kumar Saha, AGP
Ms. Bedashruti Bose ,
..for the State.

The petitioner was a driver in the Department of Health who retired from the services with effect from 30th November, 2013. The petitioner got his retiral benefits but not the arrears of salary between 17th November, 1991 to 31st March, 2013 in entirety, as a consequence whereof he approached this Court by filing a writ petition being WPA 1330 of 2024 for realization of the arrear amount. The said writ petition was disposed of by an order dated 2nd July, 2024 directing the representation of the petitioner dated 27th March, 2024 to be considered and disposed of preferably by 31st August, 2024. Subsequent thereto, the petitioner was paid a sum of Rs.78,775/- on 4th October, 2024 as and by way of arrears.

The petitioner in this writ petition has claimed interest on delayed payment of the said sum of Rs.78,775/- as also further amount by treating the interest payable on the arrear amount to be compounded with interest at the rate of 20% per annum.

The State has objected to the claim of the petitioner on the following grounds :

- i) No interest was prayed for in the previous writ petition being WPA 1330 of 2024.
- ii) The writ petition is also not maintainable before this Court as the appropriate forum available to the writ petitioner for ventilating his grievances is the West Bengal State Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 since the petitioner is a government employee.
- iii) The claim of the petitioner is barred by limitation.

After hearing the parties and considering the materials on record, I find that a sum of Rs.78,775/- was admittedly due to the petitioner and has been paid by the State respondents. The State respondent by withholding such money has derived benefit out of the said sum and the petitioner has been deprived of the said sum. The State

respondents, therefore, as and by way of compensation are required to pay interest to the petitioner.

By order dated 2nd July, 2024 the petitioner's representation was directed to be considered and disposed of. There was no mandatory direction from this Court to pay the arrear amount. On the interest being refused by payment of the principal sum on 28th October, 2024 the right to claim interest in favour of the petitioner has revived and as such it cannot be said to be barred by limitation. It cannot also be contended that the claim for interest was refused by this Court while deciding the previous writ petition on 2nd July, 2024 as the issue of interest did not fall for specific consideration of the Court, as a consequence whereof the principles analogous to constructive *res judicata* is not applicable. The Court normally rejects the belated service related benefits on the ground of limitation. The exception has been stated in *Union of India And Others Vs. Tarsem Singh* reported in (2008) 8 SCC 648 which has been subsequently followed in *Asger Ibrahim Amin Vs. Life Insurance Corporation of India* reported in (2016) 13 SCC 797 and *Rushibhai Jagdishbhai Pathak Vs. Bhavnagar Municipal Corporation* reported in (2022) 18 SCC 144. The failure to pay the arrears of salary in time is a

continuous wrong which persists till the date of retirement when the employee is supposed to be paid all his arrears. In the instant case the date is 31st March, 2013. Assuming without admitting that the petitioner was not entitled to claim such amount after three years from 31st March, 2013 but the employer without the intervention of Court on 1st June, 2023 on having paid the money thereby have admitted the petitioner's claim. This revived the petitioner's claim vis-à-vis his employer and the respondent-employer is precluded from taking the point of limitation. The writ petition has been filed within three years from such payment and as such limitation will not apply in the instant case.

The petitioner has claimed compound interest but there is no rational indicated for such claim. Compounding of interest or capitalization is not ordinarily permissible as has been held in *Central Bank of India Vs. Ravindra And Others reported in (2002) 1 SCC 367*.

The petitioner has stated in paragraph 5 of the writ petition that on account of arrears of salary from 17th November, 1991 to 31st March, 2013 the petitioner was entitled to a sum of Rs.1,45,899/-. After repeated persuasion the petitioner was paid only a sum of Rs.67,124/- on 1st June, 2023 thereby leaving an outstanding amount of Rs.78,775/-. The

petitioner says that he is entitled to interest in the entire amount of Rs.1,45,899/- from 17th November, 1991 till 1st June, 2023 and from 1st June, 2023 on the said sum of Rs.78,775/-. The petitioner had filed the previous writ petition after receiving the said sum of Rs.67,124/-. This Court while disposing of the said writ petition by the order dated 2nd July, 2024 was silent about the claim of interest of Rs.1,45,899/- from 17th November, 1991 to 1st June, 2023. In absence of specific pleading it should be construed that the interest on the said part amount was not allowed and as such, the petitioner cannot claim for the same. On the other hand the claim for interest on Rs.78,775/- arose on 3rd October, 2024 when only the principal sum was paid and not the interest. The principal claim is not barred by limitation and thus interest is payable to compensate the petitioner.

In the aforesaid facts and circumstances, I direct the State respondents and in particular the Chief Medical Officer of Health, Jalpaiguri (respondent no.3) to pay simple interest at the rate of 6% per annum on the said sum of Rs.78,755/- from 17th November, 1991 till its payment on 3rd October, 2024. The entire payment has to be made within a period of six weeks from the date of communication

of this order, failing which the interest rate will increase to 8% per annum for the entire period.

Nothing further remains to be adjudicated in this writ petition.

The writ petition is, accordingly, disposed of.

All parties including the respondent no.3 are to act on a server copy of this order without insisting upon production of a certified copy thereof.

(ARINDAM MUKHERJEE, J.)