

Form No. J(2)
Item no.A177
b.r.

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**Present:-
The Hon'ble Justice Aniruddha Roy**

WPA 13848 of 2024

***Uttam Kumar Khan
-vs-
The State of West Bengal & Ors.***

**For the petitioner : Mr. Indranil Chakraborti
Ms. Molly Saha**

**For the Respondents/ : Mr. Satyajit Talukdar
KMDA Mr. Arindam Chatterjee**

Heard On : 16.07.2025

Judgement on : 16.07.2025

Aniruddha Roy, J. :

This is a hearing matter upon affidavits.

None appears for the State.

Facts:

1. The petitioner initially was employed as an **Engineer** with **Kolkata Metropolitan Development Authority** (for short, **KMDA**) since the year **1987**. On **September 25, 1997**, the petitioner was appointed as a **Construction Engineer** with the **West Bengal State Ware Housing Corporation (for short, Ware Housing Corporation)** on **lien**. He was released from **KMDA** on or about **December 10, 1997**. The **lien** of the petitioner was initially for **one year** and then was extended for another year. Ultimately, on **November 15, 2011**, the petitioner resigned from Ware Housing Corporation and had received his superannuation benefit from Ware Housing Corporation.
2. By a letter dated **September 26, 2002**, the petitioner submitted a claim before the **KMDA** for releasing his Pro-rata pension and death-cum-retirement gratuity, leave salary etc. along with

interest and stated that he had served for more than **10 years.**

3. Since, the said claim on account of Pro-rata pension was not released by the KMDA, the petitioner filed the first writ petition, **WP 18150(W) of 2005**. A Co-ordinate Bench by its judgement and order dated **July 3, 2015, annexure p-5 at page-31** to the writ petition had disposed of the writ petition with the following observation:-

“ Therefore, to the mind of this Court the principles connected to the category of Absorption Pension- under the 1972 Rules (supra) is pari materia to the provisions of the 1976 Notification and 1986 Memorandum of the State (supra). Accordingly, this Court finds that the petitioner is eligible to be considered in connection with his claim to retirement benefits till the last date of his lien with KMDA. It is further found that the retirement benefits received by the petitioner from the Corporation are immaterial to and, cannot impact the assessment of his qualifying service under the KMDA.

In the back drop of the above discussion, the Secretary, Urban

Development Department, Government of West Bengal being the respondent no. 1 is directed to consider the claim of the petitioner for pro-rata pension and other admissible retirement benefits upon allowing the adjustments towards his liabilities on evaluation of his record of service with the KMDA in accordance with the rules and, taking notice of the observations as recorded above.

The Chief Executive Officer of the KMDA, the respondent no. 2 shall, as considered necessary by the respondent no. 1 depute a competent officer conversant with the facts to assist the respondent No. 1 in completing the above noted exercise. The respondent no. 1 shall also receive necessary co-operation from the petitioner or, through his authorized representative, as and when called for.

The respondent no. 2 shall be entitled to take consequential steps on the basis of the reasoned decision of the respondent no. 1. Considering the long pendency of the claim of the writ petitioner, the respondent no. 1 shall be also entitled to award a just quantum of interest to the dues, if arrived at, of the petitioner. In the event interest is denied the respondent no. shall record reasons for the same. The petitioner shall be entitled to receive the communication of the reasoned order of the respondent no. 1.

It is expected that the above noted exercise shall be carried out not later

than twelve weeks from the date of communication of this order.

WP 18150 (W) of 2005 stands accordingly **disposed of.**

4. Pursuant to and in terms of the said direction of the Co-ordinate Bench in the first writ petition, the State authority passed its reasoned order dated **July 18, 2017, annexure p-7 at page-45** to the writ petition and opined as follows:

“In view of the above facts and circumstances and considering the extant Govt. orders, statutory rules, regulations etc., it may be stated that that the petitioner, Sri Khan may be entitled to get the pro-rata pension from KMDA for the period of service rendered in KMDA (the then CMDA) with effect from 03.03.1989 to 31.12.1999 subject to the extension of benefit by condoning the provision laid down in sub-rule (xi) (3) of Rule 189 (A) of WBS (DCRB) Rules, 1971 by the Finance Department, Government of West Bengal.

The matter is thus disposed of.”

5. In course of the hearing of the first writ petition, KMDA had filed an affidavit, **annexure p-14 at page-68** to the writ petition, *inter alia*, contending as follows:-

12. "That the petitioner was found to be entitled to an amount of Rs.23,772/- on account of CAS benefit under ROPA' 1998 and he was also entitled to his Rs.5,342/- on account of his GPF accumulation for the period of March, 1999 to October, 1999."

6. The supportive financial statement annexed to the said affidavit is available at **page-76** to the writ petition.

Submissions:

7. On the basis of the stand taken by KMDA in the above affidavit, Mr. Indranil Chakraborti, learned counsel for the petitioner submits that when the reasoned order was passed by the State on July 18, 2017, the said contention of KMDA was not taken into

account that an alleged admitted sum of **Rs. 5,342/-** and **Rs. 23,772/-** were not paid to the petitioner.

8. Since no further step was taken in terms of the said reasoned order dated **July 18, 2017** passed by the State authority, the petitioner on **August 21, 2019**, **annexure p-8 at page-48** to the writ petition submitted a representation before the Finance Secretary. Thereafter, the petitioner filed the second writ petition **WPA 117 of 2020**.

9. The said second writ petition was disposed of by the judgement and order dated **April 1, 2022** passed by a Co-ordinate Bench with the following observation:-

“ In the instant case, the fact that petitioner served KMDA between 3rd March, 1989 and 31st December, 1999, is not in dispute. The petitioner, therefore, has KMDA for over 10 years. The petitioner has the qualifying service tenure to receive the pro-rata pension. Although the petitioner does not come within the specified services included in Rule 59, yet applying the ratio laid down in Dr. Sajal Kanti Chakraborty

(supra) an exception in case of the petitioner can be culled out by applying the provisions of regulations 15(1)(b) and 21 (b) of the KMDA Regulation, 1988. I am, therefore, inclined to extend the benefit of the pro-rata pension for the period between 3rd March, 1989 and 31st December 1999 to the petitioner without any further act or approval by the Department of Finance, Government of West Bengal, as has been held in the order of the Secretary to the Government of West Bengal, Department of Urban Development & Municipal Affairs dated 18th July, 2017. The order dated 18th July, 2017 passed by the Secretary to the Government of West Bengal, Department of Urban Development & Municipal Affairs is thus modified to the extent as if the portion recommending for condonation of delay by the Finance Department, Government of West Bengal did not exist in the same.

KMDA is directed to pay pro-rata and/or proportionate pension to the petitioner for the period between 3rd March, 1989 and 31st December, 1999 as computed on the basis of 1988 Regulation within a period of four months from date.

Parties are directed to act on the basis of a server copy of this order without insisting upon production of a certified copy thereof.

Nothing further remains to be adjudicated in this writ petition. The

same is disposed of accordingly without any order as to costs.”

10. Pursuant to and in terms of the direction of the said Co-ordinate Bench in the second writ petition dated **April 1, 2022**, KMDA has released payments to the petitioner and the petitioner has accepted the same.

11. Learned counsel, Mr. Indranil Chakraborti, appearing for the petitioner submits that, after receiving the payment, as above, the petitioner reconciled the same and found that the said two alleged sum being **Rs.5,342/-** and **Rs.23,772/-** have not been paid to the petitioner, though it was admitted by KMDA in the said affidavit used in the first writ petition. The petitioner also found that no interest was paid.

12. The petitioner then submitted a representation dated **July 25, 2023, annexure p-12 at page-66** to the writ petition, before the KMDA with the following contention:-

“ Subsequently, I applied for detailed calculation of released payment under R.T.I. Act- 2005. It is found that no interest was paid to me of the said money.

I do earnestly request you to consider the interest @ bank interest rate of deposit and pay me at an early date.”

13. KMDA then by its order dated **August 7, 2023, annexure p-13 at page-67** to the writ petition, has rejected the claim of the petitioner and communicated the petitioner that payment of interest was not permitted in terms of **KMDA-DCRB Regulations, 1988.**

14. Mr. Satyajit Talukdar, learned counsel appearing for KMDA referring to various paragraphs from the report filed by KMDA in the form of affidavit submits

whatever admissible amount was payable to the petitioner, pursuant to the direction of the Co-ordinate Bench in the said second writ petition has duly been paid and the petitioner has accepted the same without any objection. He submits that this writ petition has been filed on conjectures and surmises and as a result of after- thought.

15. Mr. Talukdar further submits that pursuant to the order passed in the second writ petition everything has been paid what was due to be paid. In any event, all other retiral benefits have duly been paid. The grievance of the petitioner in the instant **third writ petition** principally on account of interest along with a further claim that payment was not made in terms of the affidavit filed by the KMDA in 2016. He submits that all along the petitioner has accepted the payment. Therefore the question of reopening the

issue that the petitioner has not received any payment on account of the said sum of **Rs.5,342/- and Rs. 23,772/-** does not and cannot arise.

16. In the light of the above, Mr. Talukdar submits that the instant writ petition should be dismissed.

Decision

17. After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the petitioner has not raised any contemporaneous objection with regard to the alleged non-payment of the said sum of **Rs.5,342/- and Rs. 23,772/-** since after the payment was received by the petitioner pursuant to the direction of the Co-ordinate Bench in the second writ petition. The petitioner accepted the entire payment without any protest. After receiving the said payment, the petitioner had submitted its said

representation dated **July 25, 2023 at page-66** to the writ petition claiming interest only and **prayer 'b'** to the instant writ petition is in sync therewith. Though the justice demand dated **February 3, 2024, annexure p-16 at page-81** to the writ petition, spoke of the alleged claim on account of the said two components.

18. Inasmuch as, the statements made by KMDA in its report on oath shows, whatever admissible amount was payable to the petitioner following the direction of the Co-ordinate Bench passed in the said second writ petition under the order dated **April 1, 2022**, has been paid but the same has been denied by the petitioner in its exception filed in the form of affidavit. These assertion and denial of the parties give rise to an accounting dispute on the payment of the said two components. This Constitutional Court in exercise of

its writ jurisdiction shall not interfere with the same, more so when the lion's share of the claim has already been received by the petitioner and no contemporaneous objection was raised on those two components at the time of receiving the employment benefit.

19. Accordingly, the claims on those two components for a sum of **Rs. 5,342/- and Rs.23,772/-** stand **rejected.**

20. Now the question comes with regard to payment of interest.

21. Learned counsel in support of the claim on interest has relied upon a judgement of the Hon'ble Supreme Court, ***In the matter of: H. Gangahanume Gowda – vs- Karnataka Agro Industries Corpn. Ltd. reported at (2003)3 SCC 40.***

22. Mr. Satyajit Talukdar, learned counsel appearing for the KMDA has opposed the prayer for interest principally on the ground that the **KMDA-DCRB Rule** does not permit payment of interest to the employee. He further submits that there is no provision for payment of **pro-rata** pension under the **KMDA-DCRB Rules** but by virtue of the direction of the Co-ordinate Bench in the second writ petition dated **April 1, 2022**, the amount was paid to the petitioner.

23. Grant of interest is within the equitable jurisdiction of the writ Court, unless specifically provided for in the statute or in the Rules and Regulations. The employment benefit is the property of the employee and as of right, the employee is eligible to receive the same immediately upon retirement or upon lawful cessation of his employment. Admittedly, during the

period between **1987 to 1997**, the petitioner had served KMDA with an unblemished carrier record. The petitioner is entitled to interest during this period when he served KMDA.

24. Since the Co-ordinate Bench upon adjudication of the second writ petition, has directed the payment, and since the petitioner had served KMDA and received delayed payment on pro-rata pension, gratuity and other allied superannuation benefits, the petitioner shall be entitled to payment of interest.

25. Accordingly, appropriate authority of KMDA shall pay interest **at the rate of 6 per cent per annum** for the period from the **Date of Joining** of the petitioner in KMDA till the **Last Date of Working** of the petitioner in KMDA before he left on lien on the admissible amount already paid to the petitioner for

the period during **1987 to 1997, Till the Date of Payment Made** to the petitioner.

26. The interest shall be paid to the petitioner by KMDA positively after making the necessary calculation but within a period of **two months** from the date of communication of this order.

27. With the above observations and directions, this writ petition, **WPA 13848 of 2024** stands **disposed of**.

28. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)