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3.5.2023
S.D.

**W.P.A. 21097 of 2019
With
CAN 2 of 2022**

**Smt. Pragati Roy
(Syamapada Roy alias Shayamapada Roy, since
deceased)**

Vs.

The State of West Bengal & Ors.

Mr. Chitta Ranjan Chakraborty
Mr. Sumit Banerjee

.....For the petitioner

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee

..For the State

Mr. Pinaki Bhattacharyya

..For the respondent no. 4

Report on affidavit and exception thereto filed in Court
today are retained with the records.

The order dated March 29, 2023 records the facts of the
case in detail. On the previous occasion, this Court allowed
the respondent no. 4/the Accountant General (A&E) to file a
report on affidavit explaining why the PPO was not released
in favour of the petitioner, despite the District
Judge/respondent no. 3 requesting a comprehensive PPO to
be issued in favour of the petitioner's husband who was a
retired employee working under the District Judgeship of
Purulia. The petitioner's husband retired from service with

effect from April 30, 2018. The provident fund amount was released in favour of the petitioner's husband, but the rest of the pensionary benefits were not released. Neither the leave salary nor the gratuity nor other pensionary benefits were released to the petitioner.

As per the submissions made on behalf of the respondent no. 4, since the appointment of the petitioner's husband was on provisional basis, therefore, neither the gratuity amount nor other pensionary benefits could be granted to the petitioner. Such a view has been taken by the respondent no. 4 despite the fact that the petitioner's husband service was regularized and he got promotional benefits.

It is also submitted on behalf of the respondent no. 4 since in cases where vigilance/Court case, departmental or criminal proceedings are pending against the Government employee, the pensionary benefits/gratuity could not be granted, the respondent no. 4 thought it fit not to grant the benefits.

Attention of this Court is also drawn to the Finance (Audit) Department's memorandum dated March 12, 1992 to support the contention that while sanctioning provisional gratuity, it has to be recorded that no cases or appeal is pending in respect of "*drawal of pay*" of the employees

concerned. Similar recording is also to be made while sanctioning the final amount of gratuity. The fact of the Court case was also required to be mentioned/recorded in the service book of the employee with full context of the order passed by the Hon'ble High Court.

Considering the rival submissions of the parties and the materials placed on record, this Court finds that the arguments made on behalf of the respondent no. 4 are completely misplaced. The respondent no. 4 failed to take into consideration column no. 40 of the Single Comprehensive Form that was submitted by the Pension Sanctioning Authority/District Judge. The Learned District Judge clearly made an entry of “**no**” against column no. 40 which unequivocally denotes that there was no vigilance case/Court case/departmental or criminal proceedings “**pending against**” the Government employee.

In such view of the matter, to contend that since criminal/Court case was pending against the retired employee the PPO was not issued is a misplaced argument with no factual basis/nexus.

From the report that has been filed on behalf of the respondent no. 4, it appears that the Accountant General has

sought to sit in appeal over the decision of the learned District Judge by interpreting the order of this Hon'ble Court.

The Memo dated March 12, 1993 sought to be relied upon by the respondent no. 4 for non-issuance of PPO also relates to case or appeal, i.e. *pending* in respect of "**drawal of pay**" of the concerned employees. There is no dispute in respect of "**drawal of pay**" of the employee concerned. The employer has himself submitted the Comprehensive Form evidencing the undisputed scale of pay at which the employee was *drawing* the salary at the time of retirement and also forwarded the Service Book to the respondent no. 4 with the request to release/issue the PPO.

In such view of the matter, the failure to release the PPO in favour of the petitioner/her husband was absolutely an arbitrary and capricious decision which suffered from complete non-application of mind.

In the light of the discussions above, this Court directs the respondent no. 4 to issue the PPO considering the last drawn pay of the petitioner's husband in terms of the Comprehensive Form forwarded by the respondent no. 3 within two weeks from the communication of this order. The entire gratuity amount along with arrears of pension and leave encashment benefits **shall** be released within four

weeks thereof along with the interest @ 6% per annum from May 1, 2018 (the date subsequent the date of retirement of the petitioner's husband) till the actual disbursal of the aforesaid amount. Beneficial reference may be made to a judgment passed by the Apex Court reported in (1985) 1 SCC 429 (**State of Kerala vs. M. Padmanabhan Nair**)

With the directions aforesaid, **W.P.A. 21097 of 2019** is **disposed of**.

Accordingly, **CAN 2 of 2022** is **disposed of**.

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

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(**Lapita Banerji, J.**)