(2018) 06 CAL CK 0046

In the Calcutta High Court

Case No : Writ Petition5391(W) of 2018

Basanti Pandit — APPELLANT

Vs

State Of West Bengal & Ors. — RESPONDENT

Date of Decision : 27-06-2018

Acts Referred:

Citation : (2018) 06 CAL CK 0046

Hon'ble Judges : SAMAPTI CHATTERJEE, J

Bench : Single Bench

Advocate : Sourav Mitra, Pinaki Bhattacharya

Final Decision : Disposed Of

Judgement

Despite service of notice, none appears on behalf of the respondents. Mr. Pinaki Bhattacharya, learned advocate, who usually appears on behalf of

the State, is present in Court today. He is directed to appear in this matter. His appointment be regularised by the office of the Legal Remembrancer.

The material facts of the case are admitted and hence I have not called for affidavits. The husband of the petitioner was an Assistant Teacher of a

Primary School and he died-in-harness on 17.8.1971. The pension payment order was issued on 21.9.2013. The petitioner approached the concerned

authority for payment of interest on the delayed payment of pension. Being unsuccessful, the petitioner has approached this Court. In this writ petition

she prays for interest on the delayed payment of pensionary benefit.

Â It is now well settled that if there is a delay in releasing the pensionary benefits to a retired employee or to the legal heir of a deceased employee,

some amount of interest should be paid to compensate for the delay in releasing the benefits. The pensionary benefits are welfare measures meant to enable a retired employee or the dependants of a deceased employee to live a life of dignity. Hence, it is imperative and of utmost importance that

such benefits are released to a retired employee or the legal heir of a deceased employee without any delay. If there is delay, interest at a reasonable

rate is payable by way of compensation. This is not punitive but purely compensatory.

Although the point of delay or limitation has not been urged on behalf of the State, I deem it appropriate to address that issue briefly. The Limitation

Act in terms does not apply to writ petitions. The Honâ??ble Supreme Court in the case of Union of India Versus Tarmen Singh reported in (2008) 8

SCC 648 has observed that if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect

the rights of third parties.

It is settled law that the right of a retired employee to get his retiral dues on the date of attaining superannuation is a valuable right which accrues in

his favour on the date of his attaining superannuation. Further, pensionary benefits are no more considered to be a bounty to be handed out by the

State at its whim. An employee has a right to receive such benefits upon retirement. If payment of such benefits is delayed, the retired employee is

surely entitled to get some interest for such delayed payment.

The Rule that the High Court may not enquire into belated and stale claim is not a Rule of Law, but one of practice based on sound and proper

exercise of discretion. The principle on which the relief to a party is denied on the ground of laches or delay is that the right which have accrued to

others by reason of delay in approaching the Court should not be allowed to be disturbed. In the present case, it was the bounden duty of the State to

disburse the pensionary benefits on the due date.

If it has failed to do so and has released such amount after unexplained delay, it is obliged to pay interest to the retired employee. This is

compensatory in nature. Pension and gratuity are aimed at maintaining the life of a retired employee and his/her dependents, these are welfare

provisions and even if there is delay on the part of a retired employee to approach the Court claiming interest on delayed payment of pensionary

benefits, the delay per se should not be the ground for rejection of the writ petition.

No third party interest will be affected by a direction on the State to compensate the retired employee for delayed payment of pensionary benefits by

paying interest at a reasonable rate. Learned counsel for the petitioner drew my attention to a Memorandum dated November 1, 2010 issued by the

School Education Department, Budget Branch, Government of West Bengal. The said Memorandum pertains to pension / family pension in respect of

the employees who retired or died-in-harness prior to April 1, 1981. Paragraph 4 of the said Memorandum provides inter alia, that the financial benefit

may be given with effect from June 15, 1990 or from the date of application for pension / family pension whichever is later.

In the present case, the petitioner cannot state with any certainty the date of application for pension / family pension. Hence, in view of the aforesaid

and also having regard to the decision of the Honâ??ble Supreme Court in the case of D.D. Tewari (Dead) through legal representatives Vs. Uttar

Haryana Bijli Vitran Nigam Limited & ors., I direct the Treasury Officer, Kharagpur to pay to the petitioner interest at the rate of 9% per annum on

the amount released in favour of the petitioner by way of pensionary benefit on and from June 15, 1990 till the date of issuance of Pension Payment

Order.

Such payment of interest is to be made within eight weeks from the date of communication of the certified copy of this order to the concerned

authorities. Since no affidavit-in-opposition has been invited, the allegations contained in the writ petition are deemed not to be admitted. The writ

petition is, accordingly, disposed of. There will be no order as to costs. Urgent certified website copies of this order, if applied for, be made available to

the parties upon compliance of the requisite formalities.

