
(2009) 02 CAL CK 0111
In the Calcutta High Court
Case No : W.P.S.T. No. 2 of 2008

Dr. Alok Banerjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2009) 02 CAL CK 0111

Hon'ble Judges : Sadhan Kumar Gupta, J; Amit Talukdar, J

Bench : Division Bench

Advocate : Chittaranjan Chakraborty, for the Appellant; P. Nath and K. Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Amit Talukdar, J.—In, this application which is directed against Order No. 25 dated 1st July, 2008 passed by the learned West Bengal Administrative Tribunal in OA No. 334 of 2003. The principal claim of the petitioners relates to payment of interest in respect of his retiral dues.

2. The crux of the matter can be culled out from the relevant portion of the judgment under challenge before this Court which reads as follows:-

"We ignore that order of the Principal Secretary and direct the State respondents to take a decision in accordance with law regarding release of retiral benefits in favour of all the petitioners as per existing law and rule and as per existing standard of eligibility of each of the petitioners within three months from communication of this order."

3. Simply by that reckoning the learned Tribunal after disagreeing with the findings of the Principal Secretary being the respondent No. 1 came to the conclusion that the State respondents will take a decision in accordance with law regarding release of the retiral benefit which is accrued to the petitioner upon superannuation from his service.

4. On this score the Learned Counsel for the respondents is quite appropriate in his submission that no interference is called for at the behest of this Court in view of the said direction passed by the learned Tribunal upon the State respondents.

5. However, there is something more which remains to be considered in view of the claim of the petitioner in respect of the accrued interest on the dues of the retiral benefit

6. Sri Chakraborty has relied on a decision of the Supreme Court in the case of Dr. Uma Agrawal Vs. State of U.P. and Another, . On the strength of the said decision Sri Chakraborty has submitted that where the retiral benefits of a superannuated employee is kept withheld due to the laches on the part of the concerned officer it is only apposite that the amount due along side necessary interest since from the period the concerned employee was denuded from her right in respect of her dues be paid.

7. Shri Nath, Bar-at Law, Learned Counsel for the respondents has submitted that the Tribunal has already passed necessary directions for release of the retiral dues as such there is not much scope for interference by this Court.

8. He also submitted that the question of interest has been raised before this Court for the first time as such the same cannot be entertained.

9. In our view while there is some strength in the first part of the submission of Shri Nath, we feel the point raised by Shri Chakraborti with regard to payment of interest merits serious consideration.

10. We find that the petitioners had superannuated long ago but their retiral benefits were not released. They had been pursuing their remedy since long. The amount which is due to them has been kept blocked. Necessarily they have been denied the right of earning for all these period due to the laches of the respondents.

11. They should be entitled to payment of interest on the aforesaid score.

12. In this regard we are emboldened by an unreported decision of this Court in Anil Kumar Saha v. The Board of Councilors of Nabadwip Municipality & Ors. dated 22.12.08 in W.P. No. 19440 (W) of 2004 (CAN 7637 of 2008) where Aniruddha Bose. J. in paras 16 and I 7 held as follows :-

"16. On the question of interest, petitioner"s claim is based on delayed payment of interest. The Constitutional Writ Court not fettered by the provisions of the CPC or the Interest Act while adjudicating the claim for interest in respect of dues arising out of employer and employee relationship. Under Article 226 of the Constitution of India, this Court has wide power to grant reliefs in the event legal rights of a citizen are breached. Such power, in my opinion, includes power to grant interest when a finding is made that the petitioner was deprived of his legitimate dues for a long period of time by an authority which comes within the

definition of "State" under Article 12 of the Constitution of India.

17. Interest is essentially earning capacity of money. In the event someone is deprived of certain amount of money due to him on the count of rendering service to the municipality for a long period of time, he remains deprived of the benefit of the sum of money during this period. The municipality during this period gets to enjoy the earning power of such sum of money, to which they are not entitled to. The claim of the petitioner for interest in reality is for compensation for being deprived of his right to enjoy his legitimate dues. In this case, I found no valid reason for non-payment of his legitimate dues. On equitable grounds, in my opinion the petitioner would be entitled to interest at the rate of 9% per annum to be computed from lapse of three months from the date of his retirement on all outstanding dues, to be computed till the date such sum is received by the petitioner."

13. In a similar situation in *Durgawati Devi v. The State of West Bengal & Ors.* in an unreported decision of this Court in WP 25951 (W) of 2008 on 9.2.09 where Aniruddha Bose, J. also came to the following findings:-

"What is prayed for in the present Writ petition is not penal interest. Interest, in essence, represents the earning capacity of money. In the event a person is not paid his legitimate dues within the time tie is entitled to receive the specified amount, he becomes deprived of his right to enjoy the benefit of the said sum. As a corollary, the person who retains the said sum for a period beyond that to which he is entitled to, he enjoys unjust benefit from the amount retained. The quantum awarded as interest offsets this imbalance in the position of the respective parties, and is compensatory in nature."

14. Keeping in view the decision of the Supreme Court in *Uma Agarwal v. State of UP.* (supra) and the two unreported decisions *Anil Kumar Saha v. The Board of Councilors of Nabadwip Municipality & Ors.* and *Durgawati Devi v. The State of West Bengal & Ors.* (supra) of Aniruddha Bose, J. we feel that Sri Chakraborty has been successful in making a case for payment of interest to the petitioner in respect of the retiral dues of the petitioners.

15. Accordingly on arid above the direction of the learned Tribunal which we have extracted hereinabove we direct the concerned respondent to pay statutory rate of interest in favour of the petitioner on the sum of retiral dues from the date it was due till such time the amount is released. With this modification in the order of the learned Tribunal we dispose of the application.

16. Needless to say that the petitioner has been pursuing his remedy since 2003 before the learned Tribunal and as already the learned Tribunal has directed of release of the retiral dues It is expected that the same would be done with utmost despatch in terms of the order passed by us.

Sadhan Kumar Gupta, J.

17. I agree.